

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

CHRISTINA WILEY, ALEXANDRIA LEE,
TAWNEY BRIGGS, and CHRISTOPHER
KORDA, each individually and on behalf of all
others similarly situated,

Case No. 6:23-cv-03250-S-SRB

Plaintiffs,

v.

RUGSUSA, LLC,

Defendant.

**PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND INCENTIVE
AWARDS**

PLEASE TAKE NOTICE that on June 26, 2024, at 11:30 AM at Charles Evans Whittaker U.S. Courthouse, 400 E. 9th Street, Courtroom 7B, Kansas City, MO 64106, Plaintiffs Christina Wiley, Alexandria Lee, Tawney Briggs, and Christopher Korda (“Plaintiffs”), by and through their undersigned counsel, pursuant to Rule 23 and the Settlement Agreement, will and hereby do move the Court to: (1) approve an award of \$2,823,921.30 in attorneys’ fees to Class Counsel, (2) approve a reimbursement of \$29,759.30 in reasonable expenses to Class Counsel, and (3) approve incentive awards of \$2,500 each to the Class Representatives. Plaintiffs’ Suggestions in Support of this Motion is filed contemporaneously herewith.

Dated: April 12, 2024

Respectfully submitted,

By: /s/ Simon Franzini

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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2024, a copy of the foregoing document was electronically filed through the ECF system and will be sent electronically to all persons identified on the Notice of Electronic Filing.

Dated: April 12, 2024

/s/ *Simon Franzini*

Simon Franzini

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I. Introduction.

Class Counsel negotiated an excellent Settlement on behalf of the Settlement Class. Under the Settlement, Defendant will establish a non-reversionary common fund of \$14,268,403. That common fund will be used exclusively to benefit the Settlement Class.

After the Parties finished negotiating the class relief, the Parties negotiated attorneys' fees. The mediator proposed, and both sides agreed, that Class Counsel could seek an award of fees and costs equal to 20% of the common fund. The mediator also proposed, and both sides agreed, that Class Counsel could seek incentive awards of \$2,500 for each Class Representative.

Class Counsel now respectfully requests that the Court award fees and costs in the amount expressly authorized by the Settlement: \$2,823,921.30 in attorneys' fees and \$29,759.30 in cost reimbursements, for a total of 20% of the common fund. Class Counsel also respectfully requests that the Court award incentive awards to each Class Representative in the amount expressly authorized by the Settlement: \$2,500 each.

As the Court noted in granting preliminary approval, the requested 20% award "is on the very low end of fee awards in this Circuit," Dkt. 34 at 5, and is more than reasonable given the excellent Settlement Class Counsel achieved. Likewise, the requested incentive payments are on the low end of incentive payments awarded in this Circuit. The Court should grant both requests in full.

II. The requested fee award is fair, reasonable, and justified.

A. The Court should use the favored, percentage-of-the-benefit method.

In the Eighth Circuit, "[c]ourts utilize two main approaches to analyzing a request for attorney fees[,] the 'lodestar' methodology [and] . . . the 'percentage of the benefit' approach." *Barfield v. Sho-Me Power Elec. Coop.*, 2015 U.S. Dist. LEXIS 70166, at *9 (W.D. Mo. June 1, 2015). In "common fund situations," it "is 'recommended that the percentage of the benefit method [of analyzing attorney fees] be employed.'" *Bishop v. Delaval Inc.*, 2022 U.S. Dist. LEXIS 237633,

at *4 (W.D. Mo. June 7, 2022) (Bough, J.); *see Kruger v. Lely N. Am., Inc.*, 2023 U.S. Dist. LEXIS 155015, at *13-14 (D. Minn. Sep. 1, 2023) (“In the Eighth Circuit, use of a percentage method of awarding attorney fees in a common-fund case is not only approved, but also ‘well established.’”); *McKeage v. Bass Pro Outdoor World, L.L.C.*, 2015 U.S. Dist. LEXIS 195232, at *6 (W.D. Mo. Aug. 11, 2015) (“Many district courts within the Eighth Circuit have also determined that the percentage of the benefit approach is preferable in cases involving a common fund”).

Under the “percentage-of-the-benefit, or percentage-of-the-fund approach,” courts award fees “equal to some fraction of the common fund that the attorneys were successful in gathering during the course of the litigation.” *Barfield*, 2015 U.S. Dist. LEXIS 70166 at *9; *see Bishop*, 2022 U.S. Dist. LEXIS 237633 at *4 (Bough, J.) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)) (“[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”). This “aligns the interests of the attorneys and the class members by incentivizing counsel to maximize the class’s recovery.” *Kruger*, 2023 U.S. Dist. LEXIS 155015 at *14; *see Stoneridge Inv. Partners LLC v. Charter Communs., Inc.*, 2005 U.S. Dist. LEXIS 14772, at *41 (E.D. Mo. June 30, 2005) (“As courts have routinely recognized, [the percentage] approach most closely aligns the interests of the lawyers with the class, since the more recovered for the class, the more the attorneys stand to be paid.”). Plus, “[t]his approach is also consistent with arrangements in the market place for contingency cases, where the individual client generally agrees to a fee based on amount recovered.” *Stoneridge*, 2005 U.S. Dist. LEXIS 14772 at *41.

Here, as the Court’s Preliminary Approval Order recognizes, counsel’s efforts generated “a non-reversionary common fund of \$14,268,403 to benefit Class Members.” Preliminary Approval Order at 4. The Court should therefore follow the prevailing practice and award fees as a percentage

of the benefits made available to Class Members. *See e.g., Bishop*, 2022 U.S. Dist. LEXIS 237633 at *6 (Bough, J.) (using the percentage method where settlement created a common fund).

B. The requested fee award amounts to less than 20% of the total Settlement value, and so is presumptively reasonable.

In the Eighth Circuit, courts typically award Class Counsel fees amounting to 25-36% of a settlement's total value. *See In re Iowa Ready-Mix Concrete Antitrust Litig.*, 2011 U.S. Dist. LEXIS 130180, at *14 (N.D. Iowa Nov. 9, 2011) ("[C]ourts in this circuit . . . have frequently awarded attorney fees between twenty-five and thirty-six percent of a common fund in other class actions."); *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) (explaining that in this Circuit, "courts have frequently awarded attorneys' fees ranging up to 36% in class actions."); *Bishop*, 2022 U.S. Dist. LEXIS 237633, at *7 (Bough, J.) ("An award of one-third of the settlement fund is reasonable and characteristic of other awards in class action suits."); *id.* at *6-7 (awarding "a fee award of \$18,333,333.30, which is one-third of the common fund of \$55 million"); *Jones v. Monsanto Co.*, 2021 U.S. Dist. LEXIS 91260, at *23 (W.D. Mo. May 13, 2021) (fee award of 25% is "comfortably below the range frequently approved in class action settlements"); *In re Cattle & Beef Antitrust Litig.*, 2023 U.S. Dist. LEXIS 208124, at *9 (D. Minn. Nov. 21, 2023) ("Courts in this District routinely approve attorneys' fees in class actions of at least one-third of the common fund").

Here, as explained above, Class Counsel's fee request amounts to less than 20% of the value of the common fund the Settlement establishes. *See Fellows v. Am. Campus Cmtys. Servs.*, 2018 U.S. Dist. LEXIS 103003, at *15 (E.D. Mo. June 20, 2018) ("Note that attorneys' fees, costs, the costs of notice of administration and related expenses borne by the Defendants are all properly considered in assessing the value of a settlement"); *Kruger*, 2023 U.S. Dist. LEXIS 155015 at *14 ("Moreover, the Court takes into account the full value of the Settlement to Class Members in determining the percentage to award . . . '[I]t is well-established that [a] fee award should be based

on the total economic benefit bestowed on the class.””). It is therefore “on the very low end of fee awards in this Circuit” and is presumptively reasonable. *See* Preliminary Approval Order at 5.

Importantly, as the Court found in granting preliminary approval, “this is not a ‘coupon’ settlement.” Preliminary Approval Order at 5. Rather, here, “all Class Members can easily claim cash, or else will receive store credit with real value that can be used without spending any additional money.” *Id.*; *see In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 951 (9th Cir. 2015) (distinguishing settlements involving gift cards like the ones here from “coupon” settlements where class members merely get “the chance to receive a percentage discount on a purchase of a specific item or set of items” and holding that a settlement providing for the distribution of store credit gift cards with largely the same properties as the credit here was not a coupon settlement); *In re Life Time Fitness, Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, 2015 U.S. Dist. LEXIS 161734, at *5 (D. Minn. Dec. 1, 2015) (settlement was not a coupon settlement where class members could choose between a cash award or a credit to be used at defendant’s gyms); *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 2004 U.S. Dist. LEXIS 23342, at *11 (W.D. Mo. Apr. 20, 2004) (settlement was “not a ‘coupon’ settlement” because class members would “not be required to purchase any additional services or items to receive a benefit or cash payment”); *Hendricks v. Ference*, 754 F. App’x 510, 512 (9th Cir. 2018) (vouchers for purchasing Starkist Tuna were “not a form of coupon relief under [CAFA]” because the vouchers “did not expire” and were transferrable, “could be used at a wide variety of stores,” and had “sufficient value that class members could use them to purchase tuna without additional out-of-pocket expense”); *Cody v. SoulCycle Inc.*, 2017 U.S. Dist. LEXIS 163965, at *19 (C.D. Cal. Oct. 3, 2017) (noting that “there is a crucial difference between **coupons** and **vouchers**” and holding that credits for SoulCycle classes are not coupons subject to CAFA); *Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1265 (C.D. Cal. 2016) (JC Penney store credits were not coupons under CAFA); *Parsons v. Brighthouse Networks, LLC*, 2015 U.S. Dist. LEXIS 197566, at

*22 (N.D. Ala. Feb. 5, 2015) (settlement that provided \$30 credits for programming services was “not a ‘Coupon settlement’” because the credits were “essentially the equivalent of cash that [could] be spent to purchase new services outright, *without spending any of the customers’ own money.*”)
(emphasis original). Accordingly, the full value of the credits distributed to class members must be included when valuing the Settlement. *See, e.g., Backer Law Firm v. Costco Wholesale Corporation*, 4:15-cv-00327-SRB, Dkt. 192 at 5 (Bough, J.) (valuing Costco gift cards at face value in determining the gross settlement amount); *In re Online DVD-Rental* at 949-50 (affirming a fee award of 25% that valued gift cards at face value); *Hendricks v. StarKist Co.*, 2016 U.S. Dist. LEXIS 134872, at *33 n.3 (N.D. Cal. 2016), *aff’d Hendricks* at 512 (9th Cir. 2018) (“The Court values the product vouchers at \$4 million. Contrary to the objectors’ contentions, the vouchers are valued at 100 cents on the dollar”); *In re Life Time Fitness, Inc.*, 2015 U.S. Dist. LEXIS 161734 at *5, *aff’d In re Life Time Fitness* at 624 (valuing gym membership credits at face value and awarding 28% of the settlement fund); *Cody*, 2017 U.S. Dist. LEXIS 163965, at *20 (valuing SoulCycle class passes at face value and awarding 25% of the fund); *Spann*, 211 F. Supp. 3d at 1261 (in a fake discount case, valuing store credit at face value and awarding 27% of \$50 million); *Barr v. SelectBlinds LLC*, 2024 U.S. Dist. LEXIS 39068, at *5, *34 (C.D. Cal. Mar. 4, 2024) (fake discount settlement structured in the same way as this one was not a coupon settlement because “[c]lass [m]embers to redeem their settlement relief in cash if desired, and even if the relief is provided in store credit, the credit is available for any sort of purchase, does not expire, and, because [d]efendant’s website provides several products listed at prices below the average award amount, does not require [c]lass [m]embers to ‘hand over more of their own money before they can take advantage of a credit,’” and awarding fees based on a percentage of the total benefits, including store credits).

In sum, Class Counsel’s fee request amounts to less than 20% of the value of the Settlement, far below the typical award. Class Counsel’s fee request is therefore presumptively reasonable.

C. The relevant factors confirm that the requested fees are reasonable.

“Courts in this circuit may consider a variety of factors in determining the reasonableness of a fee award.” *Bishop*, 2022 U.S. Dist. LEXIS 237633 at *5 (Bough, J.). This Court considers: “(1) the benefit conferred on the class; (2) the risk to which plaintiffs’ counsel was exposed; (3) the difficulty and novelty of the legal and factual issues of the case; (4) the skill of the lawyers, both plaintiffs’ and defendants’; (5) the time and labor involved; (6) the reaction of the class; and, (7) the comparison between the requested attorney fee percentage and percentages awarded in similar cases.” *Id.* And here, each of these factors support Class Counsel’s fee request.

1. Class Counsel achieved an excellent result for the Class.

“In considering a fee award, the ‘most critical factor’ is ‘the degree of success obtained.’” *In re UnitedHealth Grp. Inc. PSLRA Litig.*, 643 F. Supp. 2d 1094, 1104 (D. Minn. 2009); *see Fish v. St. Cloud State Univ.*, 295 F.3d 849, 852 (8th Cir. 2002) (same).

Here, as explained above, the Settlement creates a \$14,268,403 common fund. *See* Agreement (Dkt. 30-1) §I(FF). And even after costs, fees, and incentive awards, each of over 300,000 Class Members will receive an average payment of approximately \$34, for a total of \$11.3 million in direct compensation. *See* §II above. This is an outstanding recovery that affords Class Members far more than other fake discount settlements have. *Cf. Jacobo v. Ross Stores, Inc.*, 2018 U.S. Dist. LEXIS 248252 at *25 (C.D. Cal. Dec. 7, 2018) (\$4,854,000 claims-made settlement in a fake discount case with an average award of approximately \$16.70, assuming a 2% claims rate, and a cash option of only 75% the value of vouchers); *Russell v. Kohl’s Dep’t Stores, Inc.*, 755 F. App’x 605, 608 (9th Cir. 2018) (affirming approval of a \$6,150,000 claims-made fake discount settlement where counsel estimated an average award of \$20 per claimant); *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 332 (C.D. Cal. 2016) (preliminarily approving a claims made fake discount settlement).

The Settlement includes many additional advantageous terms, rendering the result here all the

more outstanding. The Settlement provides for a fast and efficient notice plan, and a streamlined and simple claims process. *See Agreement §§III(G), IV.* Unlike many other settlements, there is no penalty for choosing cash. Nor is there a cap (or any restriction) on how many Class Members can receive cash. And, because the average payment will be \$34, there is a significant incentive for Class Members who prefer cash to file a claim. *See Elder v. Hilton Worldwide Holdings, Inc.*, 2020 U.S. Dist. LEXIS 259476, at *13 (N.D. Cal. Apr. 29, 2020) (a “\$25 or \$50 cash option is much more likely to justify the transaction costs of filing a claim” than a smaller cash option).

In addition, any Class Member who does not file a claim will automatically receive flexible and useful credit. *See Agreement §III(F)(2).* This ensures that 100% of Class Members will actually receive compensation under the Settlement. And, the Settlement provides that the credits can be used on any product sold on the RugsUSA website—many of which cost less than the average credit, meaning that Class Members who elect to receive store credit can use their store credit on a wide array of products without spending any additional money. *Id.* §III(F)(3); Franzini Decl. ¶21. It provides that credits can be used at any time, with no restriction, and can be combined with any other promotion or discount. *Agreement §III(F)(3).* It provides that credits will never expire, so Class Members have maximum flexibility on when to use them. *Id.* And it provides that if Class Members use a credit on an order that costs less than the value of the credit, the unused amount will remain in their account to be applied to future purchases—ensuring that Class Members can use their entire settlement award. *Id.* All of these features further enhance the value of the Settlement.

In short, Class Counsel achieved an excellent result for the Class. This weighs strongly in favor of awarding Class Counsel’s requested fee in full.

2. The case presented significant risks.

“Courts have recognized that the risk of receiving little or no recovery is a major factor in awarding attorney fees.” *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005); *see*

Stoneridge, 2005 U.S. Dist. LEXIS 14772, at *47 (“The results achieved in light of the risks undertaken is an important factor in computing the attorneys’ fees award.”).

Here, continued litigation presented significant risks and challenges. As the Court recognized in the order granting preliminary approval, “the risks presented by continued litigation are not insubstantial.” Preliminary Approval Order at 5. Not only does “Defendant contest[] liability for a number of reasons,” but “similar ‘fake discount’ cases have been dismissed at multiple stages of litigation, including in this Circuit.” *Id. Barr*, 2024 U.S. Dist. LEXIS 39068 at *36; Dkt. 30 (“Preliminary Approval Motion”) at 13-14 (discussing this). For instance, Defendant argued that Plaintiffs would be unable to certify a class because they could not calculate class-wide damages or restitution. Franzini Decl. ¶24. And while Class Counsel remains confident that this case would have been certified, it is true that courts have refused to certify some putative class actions involving fake discounts. *See Chowning v. Kohl’s Dep’t Stores, Inc.*, 2016 U.S. Dist. LEXIS 188341, at *1 (C.D. Cal. Apr. 1, 2016) (denying motion for class certification); *Sperling v. Stein Mart, Inc.*, 291 F. Supp. 3d 1076, 1087 (C.D. Cal. 2018) (granting defendant’s motion for summary judgment and denying plaintiffs’ motion for class certification). Similarly, while Class Counsel remains confident in their damages model, it is true that litigants have struggled to get damages classes certified and damages models approved, in fake discount cases. *Chowning*, 2016 U.S. Dist. LEXIS 37261, at *38 (granting summary judgment in a fake discount case because the plaintiffs “failed to demonstrate a viable measure of restitution,” and rejecting several proposed models); *see Meller v. Bank of the West*, 2018 U.S. Dist. LEXIS 169629, at *20-21 (S.D. Iowa Sep. 10, 2018) (where the class faced “substantial risk” in “obtaining class certification” and “proving damage,” that risk supported “a finding that the settlement is fair, reasonable and adequate.”); *Barr*, 2024 U.S. Dist. LEXIS 39068 at *19 (the risk of continued litigation weighed in favor of a fake discount settlement where “Defendant argue[d] that Plaintiffs would be unable to prove damages on a class-wide basis”). “Despite this legal landscape,

Class Counsel took on this litigation on a contingency fee basis, taking on the risk that they may not receive any compensation for their work and the hold-over financial risk of not getting paid until resolution.” *Barr*, 2024 U.S. Dist. LEXIS 39068 at *36. This weighs in favor of awarding Class Counsel’s fee request in full. *Id.*

3. The case presented complex legal and factual issues; and the Class benefited from Class Counsel’s expertise in this area and substantial efforts in prosecuting this case to a successful resolution.

Fake discount cases like this one present difficult legal and factual issues. *See Spann*, 211 F. Supp. 3d at 1264 (noting that “the issues in this case were novel and complex” when approving fees). As a result, such cases require substantial expertise and significant effort, to develop, prove, and successfully resolve. For example, to show an advertised discount is fake, counsel must carefully monitor the regular prices offered by the defendant over a significant period of time, which requires both technological expertise and painstaking monitoring. Franzini Decl. ¶8. As a second example, developing a viable, class-wide damages model requires substantial factual development, expert work, and legal expertise. *See Spann*, 211 F. Supp. 3d at 1264 (issues in fake discount case “were novel and complex, particularly as to plaintiff’s proposed measures of restitution”).

Here, Class Counsel has extensive experience and expertise in prosecuting consumer class actions. *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1063 (D. Minn. 2010); Franzini Decl. ¶¶3-6; Diamond Decl. ¶¶11-13; *see Khoday v. Symantec Corp.*, 2016 U.S. Dist. LEXIS 55543, at *28-29 (D. Minn. Apr. 4, 2016) (“The skill and extensive experience of counsel in complex litigation is relevant in determining fair compensation.”). And, Class Counsel “has specific expertise in litigating ‘fake discounts’” in particular. *Barr*, 2024 U.S. Dist. LEXIS 39068 at *37; Franzini Decl. ¶¶7-12 (detailing Class Counsel at Dovel & Luner’s fake discount expertise). This experience bolstered Class Counsel’s ability to successfully litigate this case and achieve an excellent result. *See In re Cattle & Beef Antitrust Litig.*, 2023 U.S. Dist. LEXIS 208124, at *9 (D. Minn. Nov. 21, 2023)

(that counsel were “experienced and skilled antitrust counsel … support[ed] [their] requested fee.”).

Moreover, Class Counsel has dedicated substantial time, effort, and resources to this case. *See Stone v. Aargon Agency, Inc.*, 2018 U.S. Dist. LEXIS 183771, at *8 (D. Minn. Oct. 25, 2018) (that counsel performed “skillfully and zealously” weighed “in favor of the [requested] attorneys’ fees and costs award.”). Class Counsel’s efforts began long before any case was even filed—with extensive investigations of Defendant’s sales and pricing practices. Franzini Decl. ¶13; Diamond Decl. ¶¶3-6. Investigating Defendant’s practices required gathering and analyzing historical pricing and sales data from archival sources like the Internet Archive. Franzini Decl. ¶13. And, it also required continued monitoring of Defendant’s website to determine whether discounts and promotional pricing were constant and ongoing. *Id.* Following these investigations, counsel at Dovel & Luner prepared comprehensive and detailed complaints for the originally filed California and Washington actions. And counsel at Burson & Fisher did the same in this District and in a separate case filed in Oregon. In addition, to achieve the excellent settlement here, Counsel prepared a lengthy and substantive mediation brief and fronted the costs of retaining multiple experts to consult on liability and damages issues. Franzini Decl. ¶16; *id.* at Exhibit 2. And Counsel arduously negotiated the terms of the Settlement. Counsel’s work on the case required substantial time and resources, and the participation of partners, associates, and paralegals. *Id.* ¶¶2, 13-18. Plus, Counsel took this case on a contingency basis, exposing them to significant risk of no recovery, and requiring them to front all litigation costs. *See In re Pork Antitrust Litig.*, 2022 U.S. Dist. LEXIS 170244, at *40 (D. Minn. Sep. 14, 2022) (granting a fee award of 33% of the common fund where counsel took the case “on contingency” and “fronted considerable costs with no guarantee that such costs would be recouped.”).

In addition to Class Counsel’s performance and dedication, “courts have repeatedly recognized that the quality of the opposition faced by plaintiffs’ counsel should also be taken into consideration.” *Khoday*, 2016 U.S. Dist. LEXIS 55543 at *29. Here, Defendant was represented by

Vorys, a well-regarded international law firm with hundreds of attorneys, which has represented 1,000 consumer and retail brands in the past three years alone.¹ And Defense Counsel arduously argued Defendant's position throughout litigation and settlement discussions. So, "[t]he quality of the representation provided by both Plaintiffs' and Defendants' counsel is another factor that supports the reasonableness of the requested fees." *Id.* at *29-30.

4. To date, no Class Members have objected to or opted out of the Settlement.

As of the date of the last report from the Settlement Administrator, there were zero objections and zero opt-outs to the Settlement. Franzini Decl. ¶26. This further confirms that the Settlement was an excellent result for the Class. *See Beaver Cty. Emples. Ret. Fund v. Tile Shop Holdings, Inc.*, 2017 U.S. Dist. LEXIS 173302, at *8 (D. Minn. June 14, 2017) ("The lack of objections is strong evidence that the requested amount of fees and expenses is reasonable."); *Goodner v. Shelter Mut. Ins. Co.*, 2017 U.S. Dist. LEXIS 86473, at *16 (W.D. Ark. June 6, 2017) ("The minimal number of exclusion requests and no opposition by a well-noticed Settlement Class strongly" supported a finding that the settlement was reasonable). So this factor supports Class Counsel's fees request too.

5. Courts in similar cases have awarded higher fee percentages.

Fee awards in false advertising cases are routinely much higher than Class Counsel's request here. In other similar consumer class actions, this Court and other courts in this Circuit routinely award between 25-36% of the fund. *In re Iowa Ready-Mix Concrete Antitrust Litig.*, 2011 U.S. Dist. LEXIS 130180 at *14-15 (N.D. Iowa Nov. 9, 2011) ("[C]ourts in this circuit . . . have frequently awarded attorney fees between twenty-five and thirty-six percent of a common fund in other class actions.") (citations omitted); *see e.g., Bishop*, 2022 U.S. Dist. LEXIS 237633 at *7 (Bough, J.) (awarding 33% of the common fund in a false advertising case); *Rawa v. Monsanto Co.*, 2018 U.S.

¹ See Vorys, <https://www.vorys.com>.

Dist. LEXIS 88401, at *26 (E.D. Mo. May 25, 2018) (awarding 28% of the fund in a false advertising case), *aff'd Rawa*, 934 F.3d 862, 870 (8th Cir. 2019); *Kelly v. Phiten USA, Inc.*, 277 F.R.D. 564, 571 (S.D. Iowa 2011) (awarding 33% of the fund in a false advertising case). And, courts routinely award such percentages in fake discount cases specifically. *See e.g., Jacobo v. Ross Stores, Inc.*, 2019 U.S. Dist. LEXIS 247426, at *14 (C.D. Cal. Aug. 6, 2019) (awarding 25% of the fund); *Spann*, 211 F. Supp. 3d at 1261 (awarding 27% of the fund).

Here, Class Counsel seeks less than 20% of the fund, far less than the typical award. That Counsel seeks a modest fee award in comparison to other similar cases is further evidence that the requested award is reasonable. This weighs in favor of granting the fee request in full, too.

D. No lodestar cross-check is required, and conducting one would be unhelpful.

In evaluating fee requests, the Eighth Circuit has held that a lodestar cross-check is not required and is only “sometimes warranted.” *Petrovic v. AMOCO Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999); *Keil v. Lopez*, 862 F.3d 685, 701 (8th Cir. 2017) (noting that district courts are “not required” to conduct a lodestar cross-check). And, courts in this Circuit and elsewhere, including this Court, frequently approve fee requests based on the percentage-of-the-benefit method alone, without performing a cross-check. *See e.g., Bishop*, 2022 U.S. Dist. LEXIS 237633 at *5 (Bough, J.) (awarding 33% of the common fund without performing a cross-check); *Miles v. Medicredit, Inc.*, 2023 U.S. Dist. LEXIS 23103, at *7 (E.D. Mo. Feb. 7, 2023) (awarding 33% of the settlement fund without performing a cross-check); *Fellows*, 2018 U.S. Dist. LEXIS 103003 at *16 (awarding 28.34% of total settlement value without performing a cross-check and noting that this award was “less than … other consumer class action cases in this Circuit”); *Scott v. Boyd Bros. Transp.*, 2014 U.S. Dist. LEXIS 189686, at *7 (W.D. Mo. Sep. 5, 2014) (awarding 30% of the total settlement fund without performing a cross-check); *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476, at *49 (N.D. Cal. Jan. 26, 2007) (awarding 25% of the total benefits to class members without performing a

cross-check); *Benson v. Doubledown Interactive, Ltd. Liab. Co.*, 2023 U.S. Dist. LEXIS 97758, at *8 (W.D. Wash. June 1, 2023) (awarding 29.3% without performing a cross-check).

Here, a lodestar cross-check would be particularly unhelpful for several reasons. First, as the Eighth Circuit has recognized, the lodestar method “creates a disincentive for the early settlement of cases” and “does not provide the district court with enough flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered.” *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 245 n.8 (8th Cir. 1996) (citing the Third Circuit Task Force Report on attorneys’ fees). So, in cases like this, where counsel achieves an excellent result for the class without resorting to protracted and expensive litigation, “performing [a] cross check,” is counterproductive as it “could discourage early resolution of cases.” *Barr*, 2024 U.S. Dist. LEXIS 39068 at *38 n.5; *see Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476, at *49 (N.D. Cal. Jan. 26, 2007) (“Under the circumstances presented here, where the early settlement resulted in a significant benefit to the class, the Court finds no need to conduct a lodestar cross-check.”).

In addition, courts have found that a lodestar cross-check is unnecessary, and have therefore declined to conduct one, when the requested fee is significantly below the range of typical fees awarded. *See e.g., Farrell v. Bank of Am., N.A.*, 327 F.R.D. 422, 432 (S.D. Cal. 2018) (holding that “[b]ecause the requested 21.1% [was] significantly below the [Ninth Circuit’s] benchmark rate” the court did not need to “apply the lodestar cross check.”), *aff’d* 827 F. App’x 628 (9th Cir. 2020); *Ebarle v. Lifelock, Inc.*, 2016 U.S. Dist. LEXIS 128279, at *33 (N.D. Cal. Sep. 20, 2016) (“The Court declines to conduct a lodestar cross-check in this case, given that under the percentage-of-the-fund method the fee request was significantly below the [Ninth Circuit’s] benchmark.”). Here, as explained above, counsel’s request is substantially below the typical fee awards granted in the Eighth Circuit, and as a result, the percentage-of-the-benefit analysis is enough to show that the Class is obtaining Class Counsel’s services at discount rates.

Finally, courts have recognized that a cross-check is inappropriate where a case is only one of a group of cases litigated by class counsel that assert the same claims and involve the same legal theories. *See Benson*, 2023 U.S. Dist. LEXIS 97758 at *8 (declining to conduct a cross-check where the case was one of a group of similar cases brought by counsel). In such cases, the class undoubtedly benefits from counsel’s work in other cases. *See Arp v. Hohla & Wyss Enters., LLP*, 2020 U.S. Dist. LEXIS 207512, at *20-21 (S.D. Ohio Nov. 5, 2020) (recognizing that the lodestar cross-check could “not reflect … Class Counsel’s work in other delivery driver cases that directly benefited the class in this case” and so “[i]t would be inequitable … to reduce a fee award based on a lodestar cross-check without considering a law firm’s work other cases raising the same or similar issues.”). Here, Class Counsel has filed more than a dozen fake discount cases against a variety of defendants asserting the same claims alleged in this lawsuit. Franzini Decl. ¶7. And counsel has spent numerous hours on these cases, developed significant expertise in this niche area of the law, and grown increasingly efficient in litigating the relevant issues. Franzini Decl. ¶¶7-12 (detailing counsel’s efforts on these cases). Counsel’s extensive experience and competence in this area benefits the proposed classes in each of these cases, including here, but will not be represented in a lodestar analysis. In contrast, calculating fees based on the percentage-of-the-benefit method alone will “automatically factor[] into the award any enhancement to the settlement derived from Class Counsel’s work in similar cases.” *Arp*, 2020 U.S. Dist. LEXIS 207512 at *21.

In short, the Court need not and should not perform a lodestar cross-check here.²

III. The requested costs are reasonable and should be approved.

“An attorney who creates or preserves a common fund by judgment or settlement for the benefit of a class is entitled to receive reimbursement of reasonable fees and expenses involved.”

² If the Court wishes to conduct a lodestar cross-check, Class Counsel can supply information regarding their lodestar upon request.

Tussey v. ABB, Inc., 2019 U.S. Dist. LEXIS 138880, at *14 (W.D. Mo. Aug. 16, 2019) (quoting Alba Conte, 1 Attorney Fee Awards § 2:19 (3d ed.)). And courts routinely award costs on top of attorneys' fees awards. *See e.g.*, *Bishop*, 2022 U.S. Dist. LEXIS 237633 at *8 (Bough, J.) (awarding costs on top of attorneys' fees of 33%); *McKeage v. Bass Pro Outdoor World, L.L.C.*, 2015 U.S. Dist. LEXIS 195232, at *13 (W.D. Mo. Aug. 11, 2015) (same); *Holt v. CommunityAmerica Credit Union*, 2020 U.S. Dist. LEXIS 260296, at *5 (W.D. Mo. Dec. 8, 2020) (same).

Here, Class Counsel have incurred a total of \$29,759.30 in out-of-pocket litigation and settlement expenses. Franzini Decl. ¶29; Diamond Decl. ¶10. These expenses were reasonably necessary and not excessive. *Id.* They should be approved in full.

IV. The requested incentive awards are reasonable and should be approved.

“[C]ourts in the Eighth Circuit routinely approve [incentive] award payments to class representatives for their assistance to a plaintiff class.” *Soderstrom v. MSP Crossroads Apartments LLC*, 2018 U.S. Dist. LEXIS 17110, at *26 (D. Minn. Feb. 2, 2018). And “courts in this circuit regularly grant [incentive] awards of \$10,000 or greater.” *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 867 (8th Cir. 2017). Here, Plaintiffs request incentive awards of \$2,500 each. As the Court recognized in the Preliminary Approval Order, the proposed incentive awards “together represent less than .1% of the Settlement’s total value,” and “are appropriate given Plaintiffs’ important and diligent service throughout this litigation.” Preliminary Approval Order at 6; *see* Franzini Decl. ¶¶30-32; Dkt. 30-4 (Wiley Decl.), ¶8; Dkt. 30-5 (Lee Decl.), ¶8; Dkt. 30-6 (Briggs Decl.), ¶8; Dkt. 30-7 (Korda Decl.), ¶8 (detailing work performed). The Court should grant the awards in full.

V. Conclusion.

Plaintiffs and Class Counsel obtained an exceptional result for the Class. They should be awarded the requested fees, costs, and incentive awards in full.

Dated: April 12, 2024

Respectfully submitted,

By: /s/ Simon Franzini

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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2024, a copy of the foregoing document was electronically filed through the ECF system and will be sent electronically to all persons identified on the Notice of Electronic Filing.

Dated: April 12, 2024

/s/ *Simon Franzini*

Simon Franzini

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

CHRISTINA WILEY, ALEXANDRIA LEE,
TAWNEY BRIGGS, and CHRISTOPHER
KORDA, each individually and on behalf of all
others similarly situated,

Case No. 6:23-cv-03250-S-SRB

Plaintiffs,

v.

RUGSUSA, LLC,

Defendant.

**DECLARATION OF SIMON FRANZINI
IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND
INCENTIVE AWARDS**

I, Simon Franzini, declare as follows:

1. I am a partner at the law firm Dovel & Luner, LLP where I co-lead the firm's class action practice. My law firm, along with Burson and Fisher, P.A., was appointed Class Counsel in this action. Dkt. 34 ("Preliminary Approval Order"), 9. I make this declaration in support of the Motion for Attorneys' Fees, Costs, and Incentive Awards (the "Motion").

2. I have worked on this matter since its inception and have supervised other attorneys and paralegals who worked on the case.

3. Throughout my career, I have litigated numerous complex cases (including class actions as well as individual plaintiff cases) and have tried a number of cases to verdict. For example, in 2019, I tried a Telephone Consumer Protection Act class action in Oregon federal court, *Wakefield vs. ViSalus, Inc.*, No. 3:15-cv-1857-SI (D. Or.). The jury returned a \$925 million verdict for the class. Due to this success, Dovel & Luner was selected as a finalist for The National Law Journal's 2020 Elite Trial Lawyers "Law Firm of the Year" award in Consumer Protection.

4. I have also negotiated and settled numerous cases, including class actions. For example, in 2022, I reached a \$17.5 million settlement in a consumer class action litigated in Colorado federal court, *Goodrich, et al. v. Alterra Mountain Co., et al.*, No. 1:20-cv-01057-RM-SKC (D. Colo.). My firm, along with our co-counsel, was appointed class counsel in that case.

5. I have litigated, and am currently litigating, a number of consumer class actions involving false advertising claims, many of which involve the same California statutes involved in this case (namely California's Unfair Competition Law, False Advertising Law, and Consumer Legal Remedies Act). These include: *Drake v. Haier US Appliance Solutions Inc.*, No. 1:23-cv-00939 (N.D. Cal.); *Akes v. Beiersdorf, Inc.*, No. 3:22-cv-869 (D. Conn.); *Wilson v. Whitestone Home Furnishings, LLC*, No. 2:23-cv-02552 (E.D. Cal.); *Gutierrez v. GWD Concept Sp. Z.o.o.*, No. 1:23- cv-00861 (E.D. Cal.); *Vizcarra v. Michaels Stores, Inc.*, No. 5:23-cv-00468 (N.D. Cal.); *Sanderson v. Whoop, Inc.*, No. 3:23-cv-05477 (N.D. Cal.).

6. My firm's resume, which provides additional detail regarding my firm and the qualifications of the other lawyers at my firm, is attached as Exhibit 1.

Fake Discount Cases

7. I have particular expertise and substantial experience with "fake discount" class actions, like this one, with a particular focus on online retailers who advertise that they are offering time-limited, sitewide sales when in fact their products are always discounted. My firm has litigated more than a dozen fake discount cases, asserting similar claims and relying on similar legal theories. For over a year, my firm has spent substantial time (and a significant portion of our overall resources) on these cases: conducting thorough investigations of factual issues, developing legal theories, comprehensively researching all past litigation and potential defenses, crafting detailed complaints, responding to substantive arguments by defendants, consulting experts with regards to both liability and damages, and, as in this case, arduously negotiating potential settlements. Just last month, the Central District of California finally approved a settlement I negotiated in another fake discount case. *See Barr v. SelectBlinds LLC*, No. 2:22-cv-08326-SPG-PD, 2024 U.S. Dist. LEXIS 39068 (C.D. Cal. 2024).

8. My firm views our efforts in this space as a campaign to stop a pernicious and widespread deceptive advertising practice that has gone relatively unchecked in the e-commerce space, and to obtain compensation for consumers who have fallen victim to such practices. As a result, we approach our work systematically. For example, recognizing that fake discount practices are often industry-wide, my firm undertakes substantial research into various e-commerce industries that we believe may suffer from the practice (e.g., rugs, mattresses, blinds, jewelry, flowers, arts and crafts, custom closets) to determine who the major players are and to evaluate what the usual sales practices look like. After this initial analysis, we thoroughly investigate each company. This is a painstaking and time-consuming practice that requires gathering and analyzing months or years of

historical pricing and sales data using the Internet Archive, as well as frequent and on-going monitoring of a company's promotions and pricing to determine whether sales are actually constant (and whether the practice is continuing). For some companies with an in-store presence, we also investigate whether the practice takes place in-stores by visiting physical locations. This requires trips to stores and further analysis of advertising and prices. As of this date, we have investigated over a hundred companies. Often, our investigations reveal that a company's sales are genuine, or that there is some other factor (such as an arbitration clause) that would prevent us from attempting to right this wrong by filing a class action. And so, only a small fraction of our investigations—roughly 10-20%—lead to a filed case. Still, the investigations are a necessary tool in my firm's attempt to end this pernicious practice—without them, we would be unable to identify perpetrators (and unable to craft satisfactory complaints, as explained below). Plus, conducting the investigations has further developed my firm's expertise in fake discount cases, allowing us to quickly see what violations look like and to better understand companies' strategies in advertising fake discounts.

9. After we finish an investigation that reveals a practice of fake discounts, we spend still more time pre-complaint determining whether the defendant has a binding arbitration clause (and whether that clause would bind some, or all, class members). Arbitration clauses are a serious obstacle in these cases (where cases are compelled to arbitration, as some of ours have been, it makes is substantially more difficult to generate class-wide relief). We also spend time and resources educating consumers about the law, communicating with consumers who have been affected to identify consumers who have suffered from the practice and are willing and able to serve as class representatives, and explaining what it means to partake in a class action. This process can take weeks or months and requires significant resources.

10. We also spend substantial time crafting complaints. Although the cases are based on

similar legal theories, they all differ factually in important ways (e.g., some companies require “coupon codes,” while others do not, some companies have sitewide percent-off discounts while others have rotating categories; companies label their fictitious reference prices in various ways, some companies have disclaimers, and so forth; all of this complicates the legal issues and analysis). And, of course, the factual predicate of each case (the violator’s sales practices) is unique in each case. Due to the nature of the alleged violations, that factual predicate is complex (establishing a violation depends on showing Defendant’s behavior over time, as opposed to a single recurring act such as a deceptive label present in most consumer class actions). Because the claims at issue sound in fraud, each of our complaints must meet the strict requirements of 9(b).

11. Outside of the specific work needed in each of our investigations (not just our filed cases), my firm spends substantial time engaged in activities that benefit the entire basket of cases but are not attributable to any specific case. This work includes, among other things, conducting thorough legal research and working with experts into to develop new substantive arguments and responses to defenses, and damages models that apply across the board and strengthen the value of each of our fake discount cases.

12. In short, I and my firm has invested a substantial portion of our resources into developing a targeted, efficient practice involved in curbing fake discounts and obtaining justice for consumers who were wronged by this pernicious practice. We have developed considerable expertise in the area, and we draw on that constantly while litigating each individual case for the benefit of the putative class.

Class Counsel’s efforts on behalf of the Settlement Class

13. Before filing a case against Defendant, my firm conducted the type of thorough investigation into RugsUSA’s sales, pricing, and promotional practices that was discussed above. To do this, we painstakingly gathered archival data from the Internet Archive reflecting RugsUSA’s

pricing and promotions on specific days over the course of several years. We then analyzed this information to determine whether its sales were constant and deceptive. In addition, after gathering this information, we continued monitoring the RugsUSA website to verify that the practice was ongoing, and to gather additional data about the company's practices. Along with this factual investigation, we completed substantial legal research and analysis of potential causes of action, possible issues and defenses, and all relevant law on fake discounts.

14. We relied on these factual and legal investigations to draft thorough complaints, which were filed in the United States District Courts for the Northern District of California and the Western District of Washington. (As explained in the Preliminary Approval Motion, these two cases, along with two cases separately filed by co-Class Counsel in this Court and in Oregon District Court, were consolidated for purposes of the Settlement). These complaints, along with those filed by co-Class Counsel as Burson and Fisher, comprehensively illustrated Defendant's wrongdoing, and the Class's various claims for relief.

15. The Parties began discussing early resolution of the claims in or around July 2023, several months after the originally filed California case, and then as discussions continued, the Parties agreed to mediate the other three cases as well. Settlement negotiations were arduous, contentious, and well-informed. The Parties agreed to private mediation, and, after discussing potential mediators, selected Signature Resolution mediator Judge Louis Meisinger (retired). The Parties scheduled a mediation for November 10, 2023.

16. Prior to the mediation, the Parties thoroughly analyzed the case and gained a comprehensive understanding of the potential risks for each side in continued litigation. As explained above, before even filing the cases, my firm conducted a thorough legal and factual investigation. And, after agreeing to mediate, the Parties conducted informal discovery and exchanged pertinent information regarding the allegations. In particular, RugsUSA provided

extensive financial and sales data that allowed my colleagues and I—with the help of an expert consultant, Colin Weir—to determine the size of the class and to put together several detailed damages models. In addition, my firm retained an expert with extensive experience in marketing and consumer class action cases, Bruce Silverman, to analyze liability issues. This was all shared with Defendant prior to the mediation in a thorough mediation brief addressing both liability and damages. Defendant, in turn, provided a comprehensive mediation brief asserting several substantive arguments attacking both its liability and our ability to prove damages.

17. On November 10, 2023, the Parties participated in a full day in-person mediation before Judge Meisinger. The mediation concluded with a mediator's proposal on material terms, which both sides accepted. At the mediation, the Parties negotiated the benefits due to the Settlement Class through the mediator and did not reach any agreement on attorneys' fees, costs, and incentive awards until after they finished negotiating the benefits owed to the Class. The Parties did not negotiate a clear sailing provision, and RugsUSA is free to challenge the amount of any request for reasonable attorneys' fees and costs, as well as the Plaintiffs' incentive awards.

18. In the weeks following the mediation, the Parties negotiated and executed a terms sheet on December 1, 2023. We then began negotiating a long-form agreement, which involved several back-and-forth redline drafts. The Settlement Agreement was executed on February 6, 2024.

The Proposed Settlement

19. The Settlement Agreement requires RugsUSA to create a non-reversionary common fund of \$14,268,403, or 14.25% of its revenue from sales of products to Settlement Class Members during the Class Period. This fund will be used to provide direct benefits to the Settlement Class, as well as pay for notice and administration costs, incentive awards to the Plaintiffs as approved by the Court, and any award of attorneys' fees, costs, and expenses as approved by the Court.

20. The Settlement requires Defendant to provide relief to every Class Member. It

provides for payments to Class Members in one of two ways. Class Members will automatically receive a Settlement Credit to use on any purchase on Defendant's website, RugsUSA.com. Alternatively, Settlement Class Members can elect to receive a Cash Benefit of the same value. In either case, the payment will be equal to 14.25% of a Settlement Class Member's total purchases on RugsUSA.com during the Class Period, minus that Class Member's small proportional share of notice and administration costs, attorneys' fees and expenses as approved by the Court, and incentive awards as approved by the Court. Based on Defendant's sales and financial data, and assuming that notice and administration costs are within the provided estimate, and that the Court awards the total permissible amount of attorneys' fees and incentive awards, my office estimates that the average Cash or Credit Benefit will be approximately \$34.

21. Based on the data provided by Defendant, I determined that Defendant regularly sells products for less than \$34—and, in fact, Defendant's records show that, during the Class Period, there were more than 50,000 unique purchases where consumers paid \$34 or less. In preparing the Preliminary Approval Motion, I instructed my staff to visit Defendant's website on February 14, 2024, February 21, 2024, and again on February 23, 2024, and review Defendant's prices. My staff reported to me that on each day they checked, there were more than 100 items available for \$34 or less. And, the available products included a wide variety of options: rugs, lamps, rug pads, doormats, rug cleaner, etc. To ensure that this is still the case, I had my staff review Defendant's prices again on April 2, 2024, April 3, 2024, and April 4, 2024. Again, my staff reported to me that there were more than 100 items available for \$34 or less. This means that the average Credit Benefit of \$34 will allow Class Members to select from numerous products available for purchase from Defendant's website without spending any more of their own money. And, Defendant offers free shipping within the contiguous United States—meaning that Class Members can dedicate their entire Settlement Credit to their purchase.

22. The Parties agreed to a simple and streamlined claims process. The Claim Form is easily accessible on the Settlement Website, and Class Members can fill it out directly on the website (or, if they prefer, they can print and mail in the form). The form does not require proof of purchase, but merely asks for identifying information and allows Class Members to pick their preferred method of payment.

23. I believe this Settlement is an outstanding outcome for the Settlement Class, ensuring that every Class Member receives relief, while presenting them the opportunity to choose the form of relief that works best for them.

24. The outcome is particularly valuable given the significant risks and costs involved in continuing to litigate this case. Fake discount cases present risk at every step of the litigation. *See e.g., Azimpour v. Select Comfort Corp.*, 2016 U.S. Dist. LEXIS 77126, at *10 (D. Minn. June 13, 2016) (granting defendant's motion to dismiss in a fake discount case); *Sperling v. Stein Mart, Inc.*, 291 F. Supp. 3d 1076, 1087 (C.D. Cal. 2018) (granting defendant's motion for summary judgment and denying plaintiffs' motion for class certification); *Chowning v. Kohl's Dep't Stores, Inc.*, 2016 U.S. Dist. LEXIS 188341, at *1 (C.D. Cal. Apr. 1, 2016) (denying motion for class certification). And here, RugsUSA has launched several attacks on the strength of Plaintiffs' claims, including arguing that its pricing was not deceptive because it was legitimately in line with its competitors, and that Plaintiffs were not injured and could not show damages because they received the items they ordered at the prices they agreed to pay. RugsUSA also argued that Plaintiffs would be unable to certify a class for several reasons, including that Plaintiffs could not calculate class-wide restitution or damages. *See Mueller v. Puritan's Pride, Inc.*, 2021 U.S. Dist. LEXIS 226103, at *4 (N.D. Cal. Nov. 23, 2021) (denying certification of a 23(b)(3) damages class in a fake discount case because plaintiffs could not "establish that damages can be accurately calculated across the class").

25. Despite these risks, my firm undertook this case (and all of our fake discount cases

and investigations) on a contingency basis. As a result, we have not yet received a cent for our work on this case, and indeed, given the risks, had no assurance that we ever would.

26. On Monday April 12, I received a report from the Settlement Administrator setting forth the objections and exclusions as of that date. (The Settlement Administrator provides weekly reports each Monday). According to that report, the Settlement Administrator has not received any objections and exclusions to date.

Fees, Costs, and Incentive Awards Request

27. The Settlement allows my firm and Burson & Fisher, P.A. to seek up to 20% of the Settlement common fund, or \$2,853,680 in reasonable attorneys' fees and costs. Here, we respectfully seek \$2,823,921.30 in attorneys' fees and \$29,759.30 in cost reimbursements.

28. As detailed in the Motion, the requested fee award of \$2,823,921.30, which represents less than 20% of the total value of the Settlement, falls far below the 25-36% awards typically granted in this Circuit. And the requested fee award is justified by the excellent results achieved in this case and by our diligent and thorough work on behalf of the Class.

29. Attached hereto as Exhibit 2 is an itemized listing of each out-of-pocket expense my firm incurred in this case. As reflected in Exhibit 2, to date, my firm has expended \$28,106.86 in reimbursable out-of-pocket expenses in connection with the prosecution of this case. These expenses are reflected in my firm's records and were necessary to prosecute this litigation. All expenses were carefully and reasonably expended, and they reflect market (and in some cases, below-market) rates for various categories of expenses incurred. Co-Class Counsel, Burson and Fisher, has expended \$1,652.44 in reasonable expenses. So, in total, we seek an expenses reimbursement of \$29,759.30.

30. As detailed in the Motion, the Class Representatives provided invaluable service to the Class, were diligent in their efforts, and should be compensated with modest incentive awards of

\$2,500 each, the maximum amount allowable under the Agreement.

31. The Plaintiffs have vigorously prosecuted this action on behalf of themselves and the putative Settlement Class. Among other things, the Class Representatives each provided documents and information needed to file their initial Complaints and the Consolidated Class Action Complaint; reviewed the pleadings and consulted with counsel on their experiences with RugsUSA; communicated with counsel in the lead-up to mediation; made themselves available for and discussed the mediation and the class-wide resolution negotiated at the mediation with counsel; reviewed, discussed, and approved the terms of the Settlement Agreement; and provided a declaration detailing their work and their approval of the Settlement for the Preliminary Approval Motion.

32. Each of the Class Representatives was consistently responsive and invested in the case. I believe that their service materially benefited the Class, and I believe that their vigorous pursuit and effort in this litigation on behalf of the Class should be rewarded with the full \$2,500 allowed by the Settlement Agreement.

I declare under penalty of perjury, under the laws of the United States and the State of California, that the foregoing is true and correct to the best of my knowledge.

Dated: April 12, 2024

By: */s/ Simon Franzini*

Simon Franzini

EXHIBIT 1



DOVEL & LUNER
LLP

A law firm built to win



04 Who we are

12 What we do

14 How we do it

26 Our reputation

34 Case studies

ATTORNEY ADVERTISING

Case 6:23-cv-03250-GRB Document 361-1 Filed 04/12/24 Page 14 of 55

**Dovel & Luner is a plaintiff's firm
that litigates high-stakes cases
in courts across the country.**



**We work on contingency and
are paid only for success.**



We win trials and arbitrations

Bloomberg
Law®

Jury Reaches \$925 Million Verdict in Telemarketing Case

Posted April 15, 2019, 8:41 AM



A federal jury has ordered a multi-level marketing company to pay \$925 million for making nearly 2 million unsolicited telemarketing calls to consumers promoting weight-loss products.

We get big settlements

COMPUTERWORLD

IDG — the world's largest technology media company

SEMINAR & CIO | IT-CAREER | IT-HEALTH | IT-COURSE

IDG News Service >

Defendants to pay up to \$112 million in Power-over-Ethernet patent case

Jim Duffy
19.07.2010 1d 20:38 | Network World (US)



Network-1 Security Solutions, an acquirer and licensor of intellectual property, says it has settled its Power-over-Ethernet patent infringement case against Cisco and five other companies.

Who we are

Greg Dovel

greg@dovel.com



Twenty-five years ago, Greg gave up his partnership at a name-brand firm to create a firm dedicated at its core to training excellent lawyers to win cases. He wanted to build a firm that would not bill hours and would only be paid for success—a firm that was built to win cases.

Greg's cross-examinations suck the air from the courtroom, demoralize opposing lawyers, and win cases. In court, it feels like magic. But magic has nothing to do with it. Greg's crosses are the result of thousands of hours spent practicing his trial skills and teaching others to do the same. None of those hours were billable. This could only be done at a firm like Dovel & Luner.

For an example of one of Greg's crosses, turn to page 21.

- Law clerk to Supreme Court Justice Antonin Scalia (1987-88)
- Law clerk to Ninth Circuit Judge J. Clifford Wallace (1986-87)
- Harvard Law School (J.D., *magna cum laude*, 1986)
- Central Washington State University (B.A., *summa cum laude*, 1983)

“When you’re not practicing, someone somewhere is. And when the two of you meet, the other person will win.” – Bill Bradley

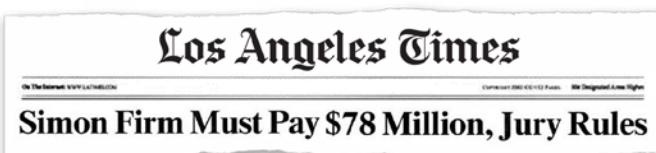
Sean Luner

sean@dovel.com



Sean is an expert in persuasion. He has been hired as a trial consultant to prepare opening statements and closing arguments in more than 100 trials by law firms such as O'Melveny & Myers, Irell & Manella, Paul Hastings, Winston & Strawn, and Greenberg Traurig. Sean uses that same skillset to persuade judges, juries and opposing parties that his own clients' claims are winners. This leads to exceptional results.

In one case that appeared to have an insurmountable problem, Sean was brought in weeks before trial. The client was facing a fraud claim for failing to disclose a troubling fact before the parties entered a business deal—that the client had pleaded guilty to drug smuggling and served years in prison. Through a series of focus groups, Sean developed an approach that turned that troubling fact in his client's favor. The jury came back with a fraud verdict, but not against Sean's client. It was against the other side:



- University of Southern California (J.D., Order of the Coif, 1992)
- University of Southern California (M.B.A., Beta Gamma Sigma, 1992)
- University of California at Los Angeles (B.S., 1988)

"Success is peace of mind, which is a direct result of self-satisfaction in knowing you made the effort to become the best of which you are capable." – John Wooden

Julien Adams

julien@dovel.com



Julien came to Dovel & Luner after six years as an Assistant United States Attorney, prosecuting government fraud and public corruption. As a federal prosecutor, Julien tried 21 jury trials, won them all, and received commendations from the FBI, IRS, and NASA.

After more than 25 years as a trial lawyer, Julien has mastered the art of framing a case to achieve victory. For example, Julien represented a solo entrepreneur in a multi-million dollar breach of contract case against a Fortune 100 company. Our client claimed the contract was a two-page document titled "Letter of Intent." The defendant asserted there was no contract. Our focus group testing showed that if jurors were asked to decide whether this document was a binding contract, they would hone in on the title, which said "Letter of Intent," not "Contract," and we would lose.

Julien reframed the issue. In his opening statement, he told jurors that they needed to decide whether the document was a "binding letter of intent" or a "non-binding letter of intent." The title became irrelevant. While the jury was deliberating, the defendant capitulated and agreed to a favorable settlement.

- Assistant U.S. Attorney (1995-2001)
- UC Berkeley School of Law (J.D., 1991)
- University of Southern California (B.A., 1988)

"The pursuit of truth will set you free; even if you never catch up with it." – Clarence Darrow

Rick Lyon

rick@dovel.com



Rick is a fourth-generation lawyer. He is people savvy and especially adept at finding concrete details and turns of phrase that persuade judges and juries to find for our clients.

He is also adept at prevailing for his clients against seemingly difficult odds. He does this by deeply analyzing arguments, coming up with answers for all doubts, and crafting briefs and oral arguments that persuade judges and jurors.

For example, Mirror Worlds, a software startup, had a prior patent lawsuit against Apple that ended with a judgment of non-infringement. Then Dovel & Luner took the case. Rick filed a new lawsuit asserting that Apple continued to infringe the same patent. Naturally, Apple argued that the new case was barred: Apple's products had already been found not to infringe. Rick came up with a new infringement theory and convinced the district court that the earlier judgment did not bar the second lawsuit. Even more astounding, Rick persuaded the court that the earlier judgment did bar Apple's invalidity defenses. With no invalidity defense and facing a compelling infringement case, Apple settled the case on the eve of trial.

- Harvard Law School
(J.D., *cum laude*, 2003)
- Stanford University
(B.S., 2000)

"Truth, like gold, is to be obtained not by its growth, but by washing away from it all that is not gold." – Leo Tolstoy

Christin Cho

christin@dovel.com



Christin has amassed a track record of success in all aspects of high-stakes litigation, from summary judgment motions to jury trials.

Christin excels at unpacking complex cases, finding a key point of vulnerability, and then creating a decisive attack on that point.

For example, in a case against a Silicon Valley giant, the defendant's key defense hinged on proving that "pattern matching" meant comparing wireless signal characteristics. Christin developed a cross-examination of the defendant's expert that included a series of simple questions that could only be answered one way. Christin walked the expert down this path, which ultimately led the expert to admit, unambiguously, that the defendant's key premise was false:

14 In the context of the claims, is it your
15 opinion that "pattern matching" means doing a
16 comparison of wireless signal characteristics?
17 A. No

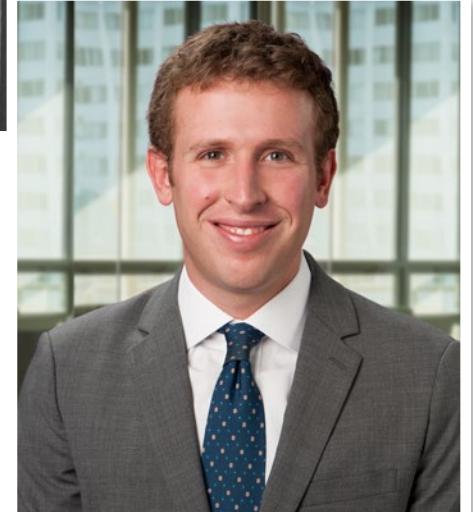
- Law clerk to Ninth Circuit Judge J. Clifford Wallace (2006-07)
- UC Berkeley School of Law (J.D., Order of the Coif, 2005)
- Amherst College (B.A., *cum laude*, 2001)

Victory for our client soon followed.

"Every day that you don't practice is a day you're getting worse." – Amy Chua

Simon Franzini

simon@dovel.com



Simon excels at accurately analyzing complex facts and tangled legal issues and turning them into winning trial cases.

For example, our firm was brought in at the last minute to try a class action case in federal court in Oregon, alleging violations of consumer protection laws against robocalls. Because the case had been expected to settle, the deposition testimony was thin and no experts had been designated. The defendant became convinced it would win at trial and refused to settle.

Simon dove in and began stitching together evidence that would prove the case. For example, in the absence of a designated expert, he came up with a way to have a fact witness summarize the class-wide database evidence. And he took an old declaration offered by a defendant witness for a procedural issue, and used it as compelling proof that defendants made millions of illegal telemarketing calls. At trial, Simon delivered the closing argument on a Friday morning. That afternoon, the jury came back with a verdict:

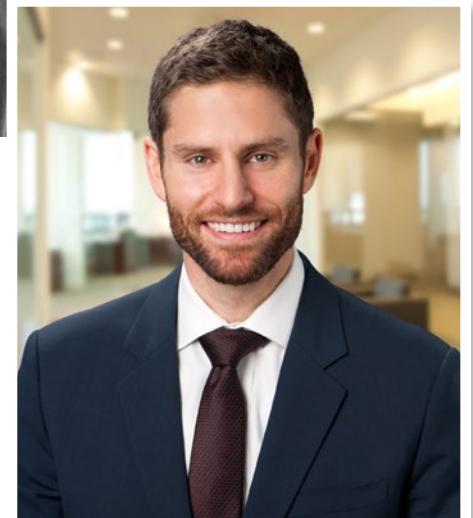
Jury Reaches \$925 Million Verdict in Telemarketing Case

- Harvard Law School (J.D., *magna cum laude*, 2012)
- New York University (B.A., *summa cum laude*, Phi Beta Kappa, 2009)

“Practice isn’t the thing you do once you’re good. It’s the thing you do that makes you good.” – Malcolm Gladwell

Jonas Jacobson

jonas@dovel.com



Before joining Dovel & Luner, Jonas worked for five years as a jury consultant, conducting mock trials, witness preparation, and jury selection in cases ranging from securities fraud to patent infringement. He joined the firm because he wanted to do more than give advice to trial attorneys—he wanted to be one.

Since joining the firm, Jonas has excelled as an advocate. In his first three years, Jonas argued two appeals before the U.S. Court of Appeals for the Federal Circuit and won both. In another case, Jonas cross-examined the defendant's expert witness at trial and undermined each of the defendant's arguments. Jonas even got the expert to admit that one of the expert's main contentions was not only a "mistake," but that he had told the defendant's lawyers a "month or two" before trial that it "was false."

18 Q I had to bring it out on cross, right, sir?
19 A Well, yes, and I am telling you that was my mistake.
20 Q When did you tell HP that what they had in this
21 contention was false?
22 A It may have been a month or two ago.

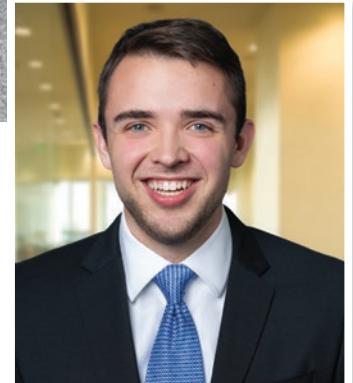
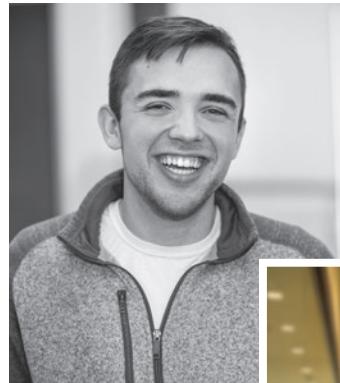
- Stanford Law School (J.D., Order of the Coif, 2009)
- Stanford University (M.A., psychology, 2009)
- Princeton University (B.A., *summa cum laude*, Phi Beta Kappa, 2005)

"The signal is the truth. The noise is what distracts us from the truth." – Nate Silver

Alexander Erwig

alexander@dovel.com

- Harvard Law School
(J.D., *magna cum laude*, 2020)
- University of Oregon Clark Honors College
(B.A., *cum laude*, Phi Beta Kappa, 2016)



Joey Bui

joey@dovel.com

- Harvard Law School
(J.D., *cum laude*, 2021)
- NYU Abu Dhabi
(B.A., *cum laude*, 2016)



Grace Bennett

grace@dovel.com

- Harvard Law School
(J.D., 2022)
- Georgetown University
(B.A., *magna cum laude*, 2017)
- Bar application filed



What we do

We build **winning** cases.

For every client, we build a winning case for trial. Because we build powerful cases, we often force large settlements shortly before or even during trial.

In our firm's 25-year history, we have obtained successful results for our clients in over 250 lawsuits.

We work on cases where more than \$25 million is at stake.

We work on contingency.

We have expertise in:



Business claims

- antitrust
- partnership and joint venture disputes
- complex contract disputes
- breach of fiduciary duty

Bankruptcy claims

- contract and business tort claims
- claims against directors and officers
- preference claims
- fraudulent transfers

Intellectual property

- trade secret theft
- patent infringement
- copyright infringement

Arbitrations

- domestic
- international

Class actions

- antitrust
- consumer class actions

Other high-stakes claims

- real estate litigation
- insurance coverage

How we do it

Our firm's primary advantage is that we are not designed to bill hours, we are **Built to Win**.



You are not going to get exceptional results if you hire a law firm that operates like every other law firm.

If you want exceptional results, you need to hire a firm that operates like no other law firm.

There are eight key elements to our success



Exceptional lawyers

Building a powerful case requires that each task and each decision come from an excellent lawyer, one with the highest skill levels in analysis, written and oral persuasion, and cross-examination.

We only have excellent lawyers.

We don't have a hiring quota for first-year lawyers that we have to fill each year. We only hire when a truly gifted lawyer comes along.



Calif. Firm Dovel & Luner Tops Cravath With Higher Pay

Greg Dovel



Sean Luner



Julien Adams



Rick Lyon



Christin Cho



Simon Franzini



Jonas Jacobson



Alexander Erwig



Joey Bui



Grace Bennett



"Whether you are comparing arguments, briefs, or lawyers, a single excellent is a heavy favorite against ten ordinary." – Sean Luner

How we do it

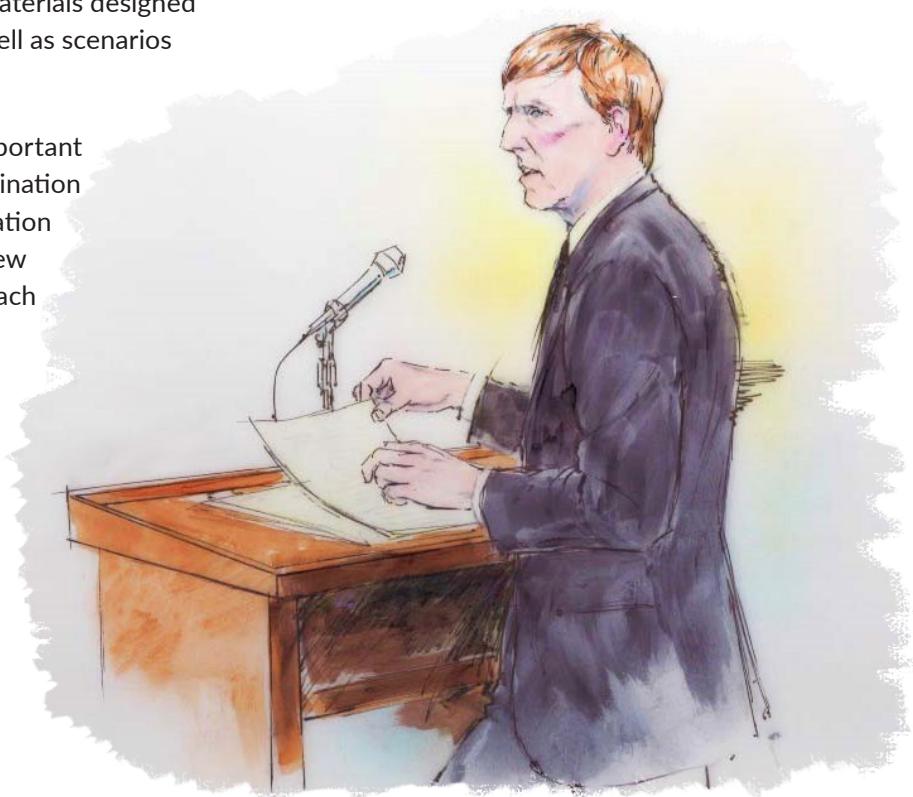
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Deliberate practice

Mastering persuasion requires continuous improvement. The science of expert performance calls this "deliberate practice."

Our attorneys regularly engage in deliberate practice to improve their trial skills. In our Trial Lab, we drill trial and persuasion fundamentals and experiment with new techniques. We use practice materials designed specifically for improving skills, as well as scenarios taken from our current cases.

For example, before deposing an important witness, we practice the cross-examination in our lab. This hones cross-examination skills. It also allows us to discover new lines of inquiry and refine our approach to obtain key admissions that will be critical to our trial success.



"After I'd been a lawyer for 10 years, I was a very good cross-examiner. Ten years after that, after another decade of deliberate practice, I was even better. And today I am achieving my highest skill levels."
- Greg Dovel

3 Experience



We staff our cases with only partners or with at least two partners for every associate.

As a result, our partners are not insulated from the details of the case. They know all the legal and factual nuances. They can write a better brief, take a better deposition, and make better strategic decisions.

The average years of experience for lawyers in a typical litigation department is 7.1 years. At our firm, the average experience is 15.2 years.

How we do it



Principles of persuasion

We apply principles of persuasion.

A “principle of persuasion” is a fundamental truth with broad application that will eliminate or mitigate doubts, causing the decision-maker (whether judge, jury, or opposing side) to adopt a more favorable view of your case.

We have identified these principles through academic and practical research, and we have refined our understanding of them as trial lawyers and trial consultants. We apply them consistently and successfully to build strong settlement positions for our clients and to prove their cases at trial.

Applying principles of persuasion, we achieve extraordinary results:

Google hit with \$85M infringement verdict

Texas jury awards the amount to patent licensing company SimpleAir Inc.

By Fiona Smith
Daily Journal Staff Writer

With the help of a Santa Monica-based law firm, patent licensing company SimpleAir Inc. has won an \$85 million jury verdict

months after a separate jury unanimously found that Google had infringed on two SimpleAir patents for technology sends “push notifications” from applications such as Face-

frey Eichmann, an attorney for SimpleAir with Dowd & Luner LLP.

“I think the jurors’ verdict shows they rejected a very low damages estimate set by

two inventors who patented the disputed technology in the mid 1990s, but who were unable to successfully commercialize the technology at the time, Eichmann said.

In response by email to the ruling, Google spokesman Matt Kallman wrote: “The jury awarded far less than SimpleAir’s excessive demand, but we continue to believe we do not infringe and are considering our options.”

Google’s attorneys from Kilpatrick Townsend & Stockton LLP did not respond to re-

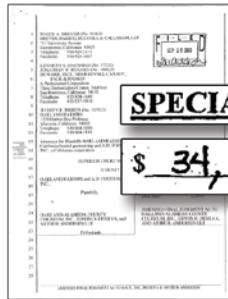
The \$85 million in damages was for past infringement only and the company will be seeking future damages as well, Eichmann said.

... including cases where we are brought in a few weeks before trial:



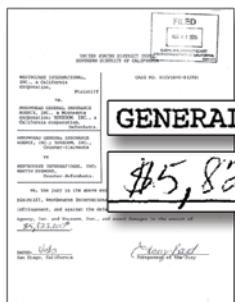
SPECIAL VERDICT

\$ 16,500,000



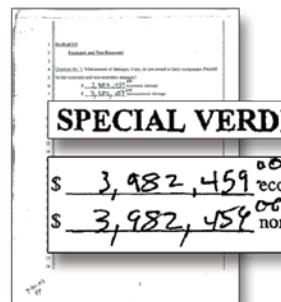
SPECIAL VERDICT

\$ 34,203,135.00



GENERAL VERDICT

\$5,823,000⁰⁰



SPECIAL VERDICT

\$ 3,982,459⁰⁰ economic damage
\$ 3,982,459⁰⁰ non-economic damage



How we do it



Killer cross

For many lawyers, a successful cross-examination makes one or two points and avoids causing more harm than good. But that is not enough to achieve extraordinary results. Extraordinary results happen when a witness unequivocally gives up a key defense or the witness's credibility is destroyed to the extent that everyone in the courtroom knows the witness is lying.

We achieve extraordinary cross-examinations in every case, in depositions and at trial.



An example:

In a patent infringement case, defendant Cisco argued that our client's patent (the Katzenberg '930 patent) was invalid because it was just an obvious variation of an existing Cisco device invented by senior engineer Karl Nakamura.

Defendants' contentions

In summary, the Defendants contend as follows:

13. The '930 patent is invalid based on obviousness under 35 U.S.C. § 103.

On the third day of trial, the defendant called Mr. Nakamura to the stand to show how similar his idea was to the Katzenberg '930 patent. His testimony was persuasive. But then we got a chance to cross-examine him. Fifteen minutes later, Mr. Nakamura admitted:

12 Q And the approach of sending a low level
13 current, as in the '930 patent, was not obvious,
14 right?
15 A That's correct.

16 Q And if the Ladies and Gentlemen of the Jury
17 agree with you, then this patent is certainly valid,
18 right?
19 A Well, it's certainly valid.

The result:

COMPUTERWORLD

IDG — the world's largest technology media company

SEMINAR & CIO

IT-CAREER

IT-HEALTH

IT-COURSE

IDG News Service >

**Defendants to pay up to \$112 million in
Power-over-Ethernet patent case**

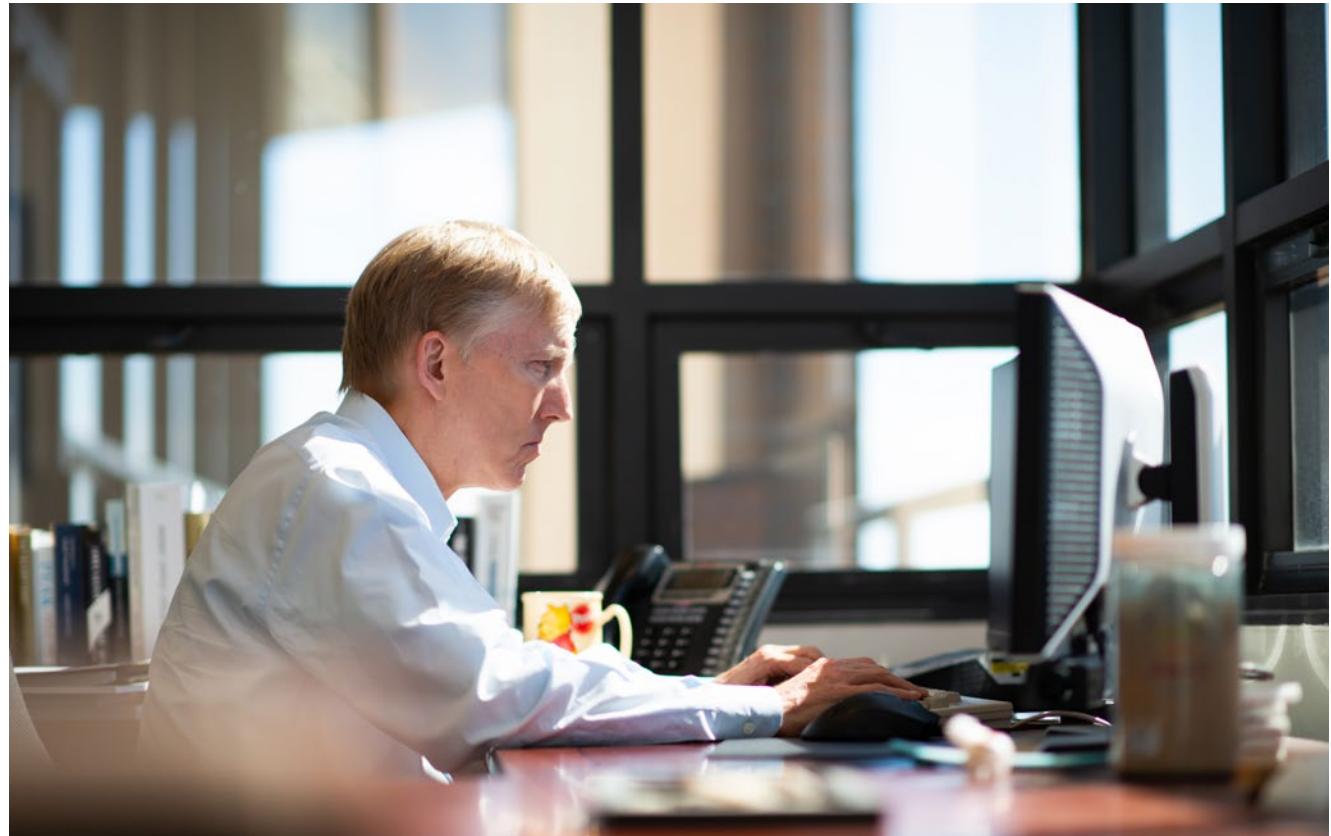
How we do it

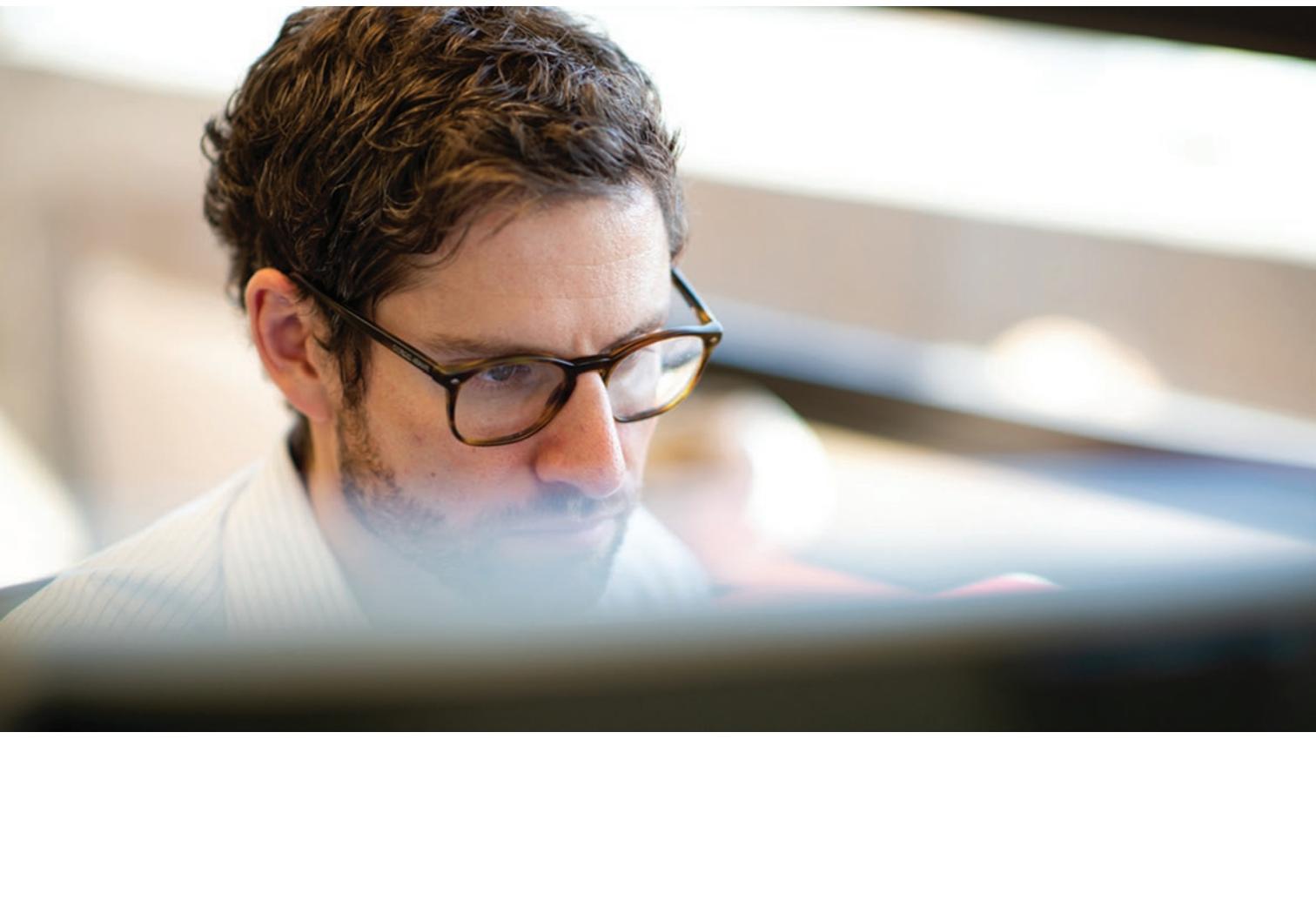
6 Winning briefs

Our briefs directly take on our opponents' best arguments and destroy them with clear, powerful logic.

10 THE COURT: The judge made it with prejudice rather than
11 without prejudice.
12 MR. DOVEL: That's right. That's a very common...
13 THE COURT: But you're saying it has no other
14 significance beyond that?
15 MR. DOVEL: None, your Honor. None, your Honor. We
16 cite case after case in our brief from the Courts of Appeal that
17 hold that.
18 THE COURT: I thought your gray brief was particularly
19 clear and powerful on that point - even more than the blue brief.
20 MR. DOVEL: Yeah, we did hit it very hard your Honor.

Chief Judge Paul Michel, United States Court of Appeals for the Federal Circuit
Media Techs. v. Upper Deck Co., 334 F.3d 1366 (Fed. Cir. 2003)





“They’re smart and always prepared,” the judge said.
“Their written work product was second to none.”

“Beyond Stellar,” *Daily Journal*, July 23, 2018
(quoting former Magistrate Judge in the Eastern District of Texas)

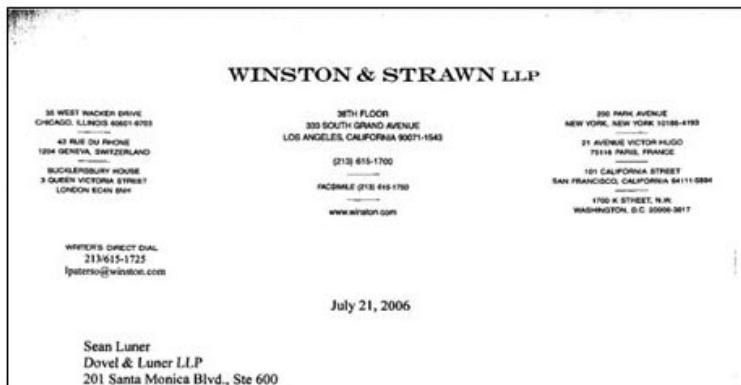
How we do it



Visual Victory

In a complex trial, a winning case is built with visuals.

We design our visuals in-house, so that we can seamlessly integrate our graphics with our arguments. Other litigators recognize our skill with visual strategies and hire our in-house trial consulting division, Visual Victory, for their cases.



There is no question that your work had a major impact on Judge Robert E. Jones. You will remember that at the end of the closing arguments, he asked us for a copy of our closing argument presentation. We found out later that he took the CD-Rom to the Oregon Bar Association's annual convention and presented it at a workshop on the use of cutting edge technology in the court room. We believe that he was particularly impressed with the way you set up the closing argument presentation so that we presented the law to him, then a summary of our evidence, and finally video out takes in which the plaintiffs made key admissions. You may not know that he later told us in open court that he had described our closing to other judges as a "Rhetorical Rembrandt." I may have been the orator but you are clearly the artist. Thank you.

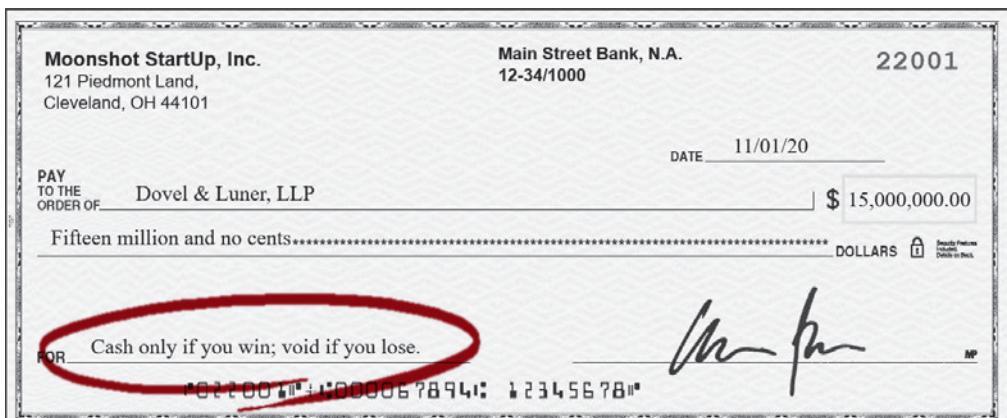
LTP:law

8

Paid only for success

We structure all of our fee agreements so that we get paid to win cases, not to bill hours. We do this because lawyers should be compensated for obtaining excellent results for their clients, not merely for billing time.

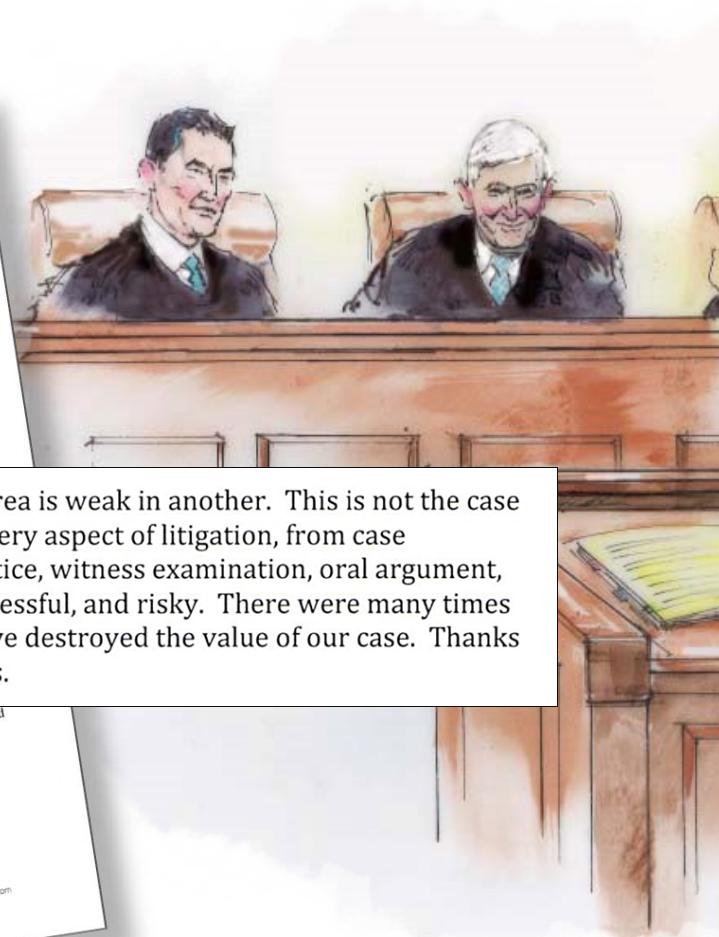
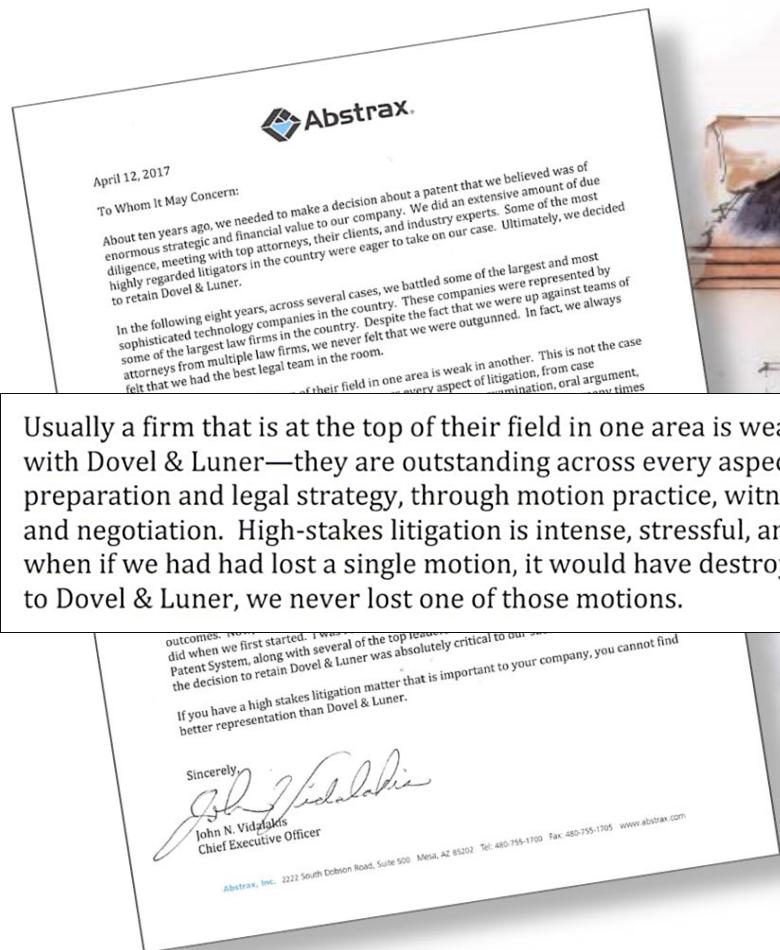
We regularly take cases on a full contingency-fee basis, including covering all case expenses. We do not represent clients on an hourly-fee basis.



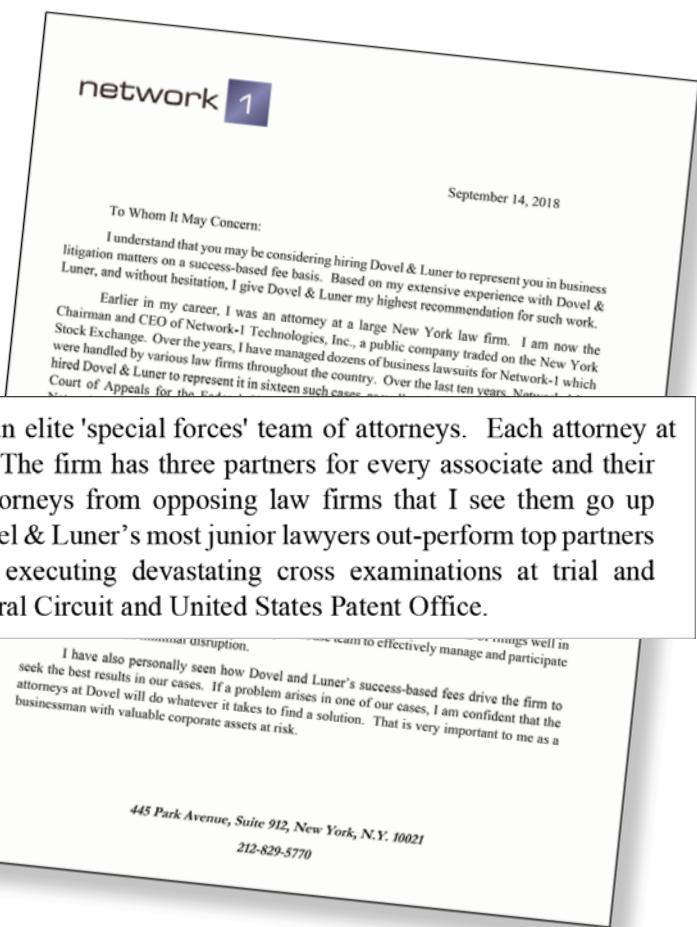
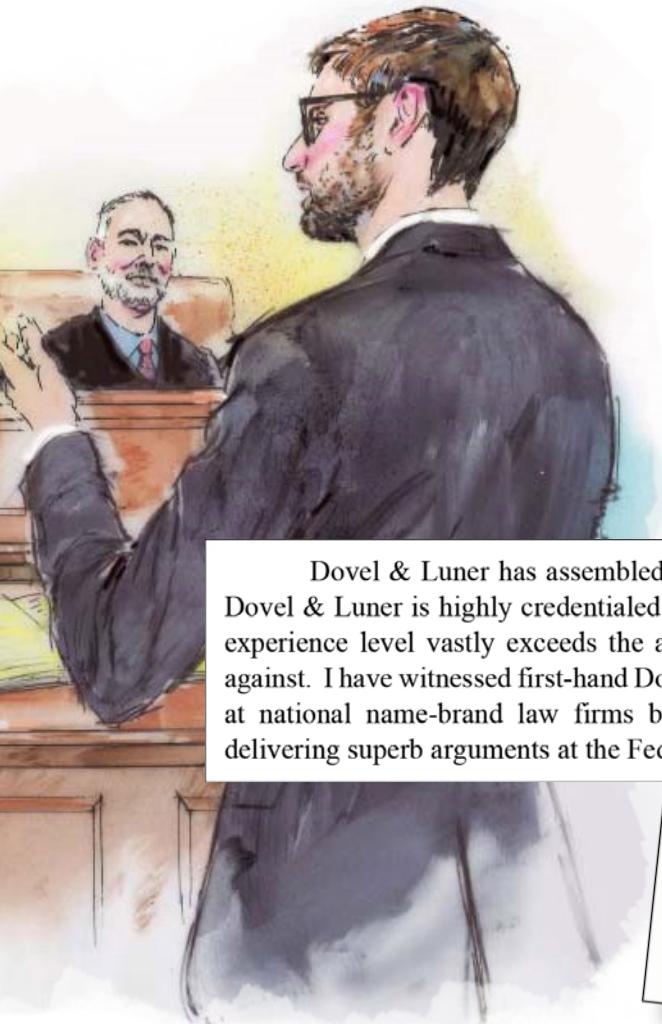
"Lawyers with a direct economic incentive to win will deploy a team whose day-to-day focus is on actions that lead to winning." - Christin Cho

Our reputation

What clients say:



What clients say:

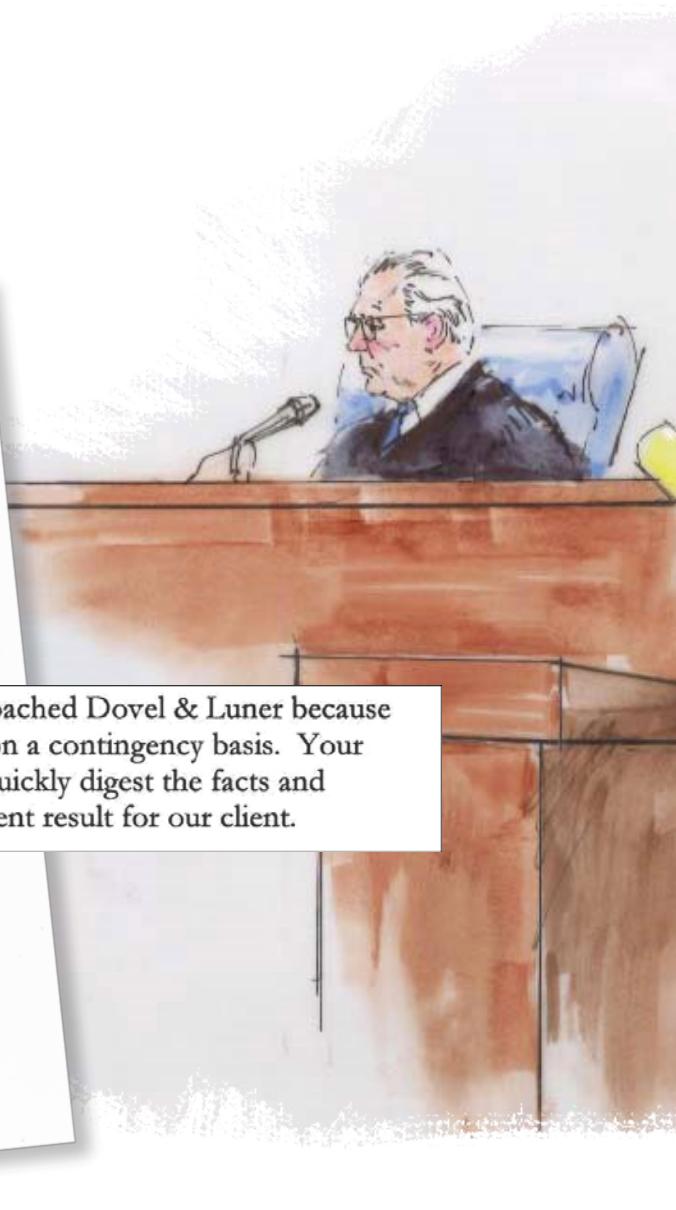
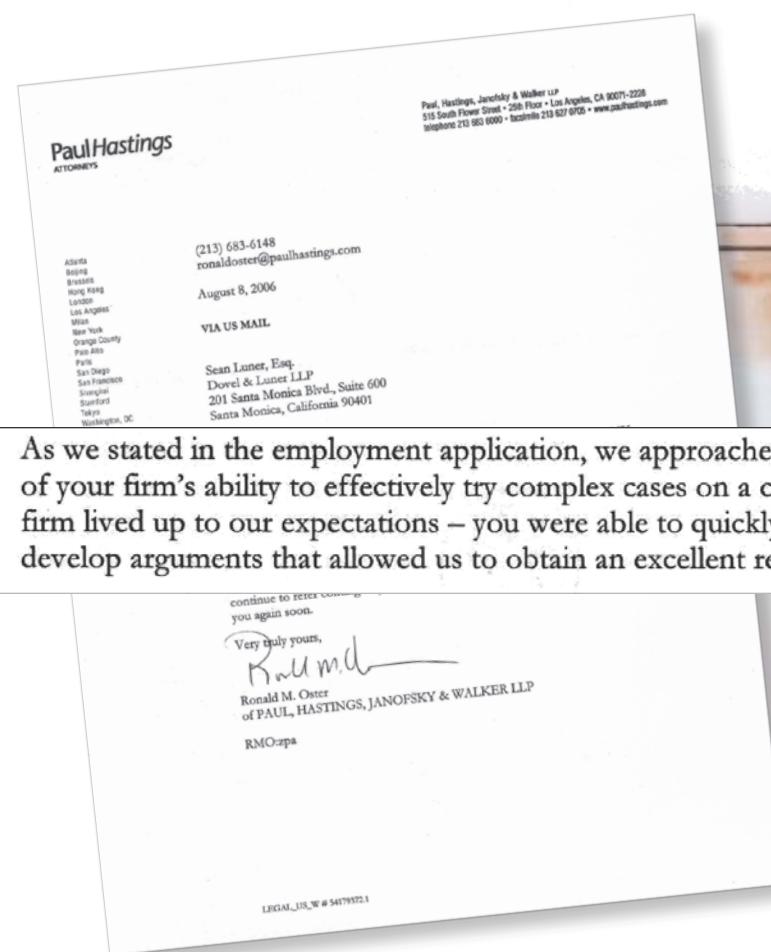


Dovel & Luner has assembled an elite 'special forces' team of attorneys. Each attorney at Dovel & Luner is highly credentialed. The firm has three partners for every associate and their experience level vastly exceeds the attorneys from opposing law firms that I see them go up against. I have witnessed first-hand Dovel & Luner's most junior lawyers out-perform top partners at national name-brand law firms by executing devastating cross examinations at trial and delivering superb arguments at the Federal Circuit and United States Patent Office.

I have also personally seen how Dovel and Luner's success-based fees drive the firm to seek the best results in our cases. If a problem arises in one of our cases, I am confident that the attorneys at Dovel will do whatever it takes to find a solution. That is very important to me as a businessman with valuable corporate assets at risk.

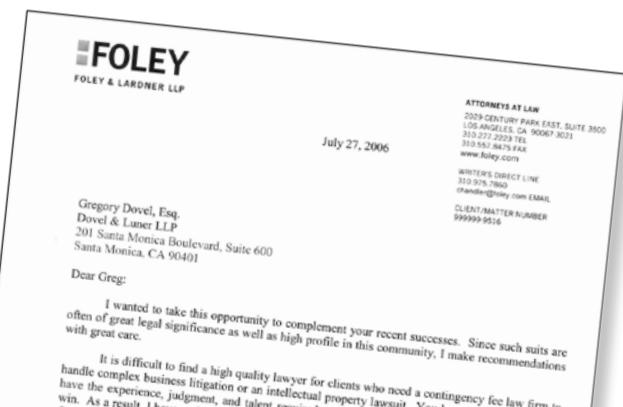
Our reputation

What colleagues say:



As we stated in the employment application, we approached Dovel & Luner because of your firm's ability to effectively try complex cases on a contingency basis. Your firm lived up to our expectations – you were able to quickly digest the facts and develop arguments that allowed us to obtain an excellent result for our client.

What colleagues say:



It is difficult to find a high quality lawyer for clients who need a contingency fee law firm to handle complex business litigation or an intellectual property lawsuit. You know that I believe you have the experience, judgment, and talent required to litigate these complex, big dollar cases and win. As a result, I have no hesitation in referring and have been happy to refer such matters to your firm, and will continue to do so in the future.



Our reputation

What jurors say:

TO: Don Rosen
FROM: Gretchen Parker
Foreperson
RE: John Morrison vs Russell & Rusty West
DATE: January 20, 2000
FAX: 213-955-9886

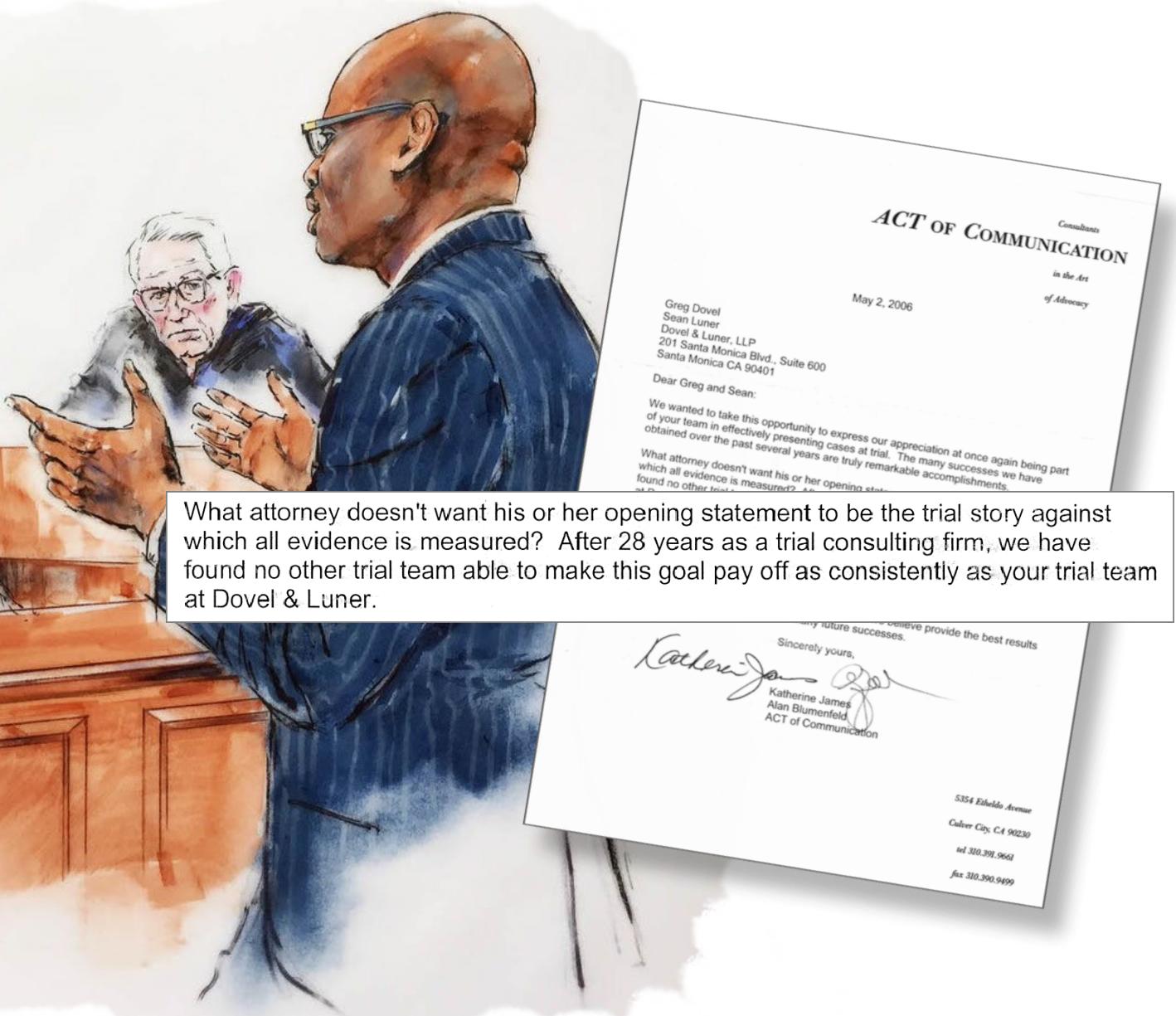
I have not been able to reach Linda or Ann so I'm just going to wing this. I must have destroyed all of my trial notes and names are fuzzy. I hope I'm not too convinced

In our discussions the graphics were a blessing in putting thoughts into a perspective that could be easily understood. The APPLE TREE was most helpful in explaining what seemed to be an enormous amount of money to those jurors who were completely unfamiliar with sales, specifically commission sales. They could relate to apple trees having to form and grow before they bear fruit -- the fruit being the reward of careful preparation, nourishment and nurturing.

P.S. I'd love to see the ~~success~~ ever materialized.



What jury experts say:



Our reputation

What opponents say:

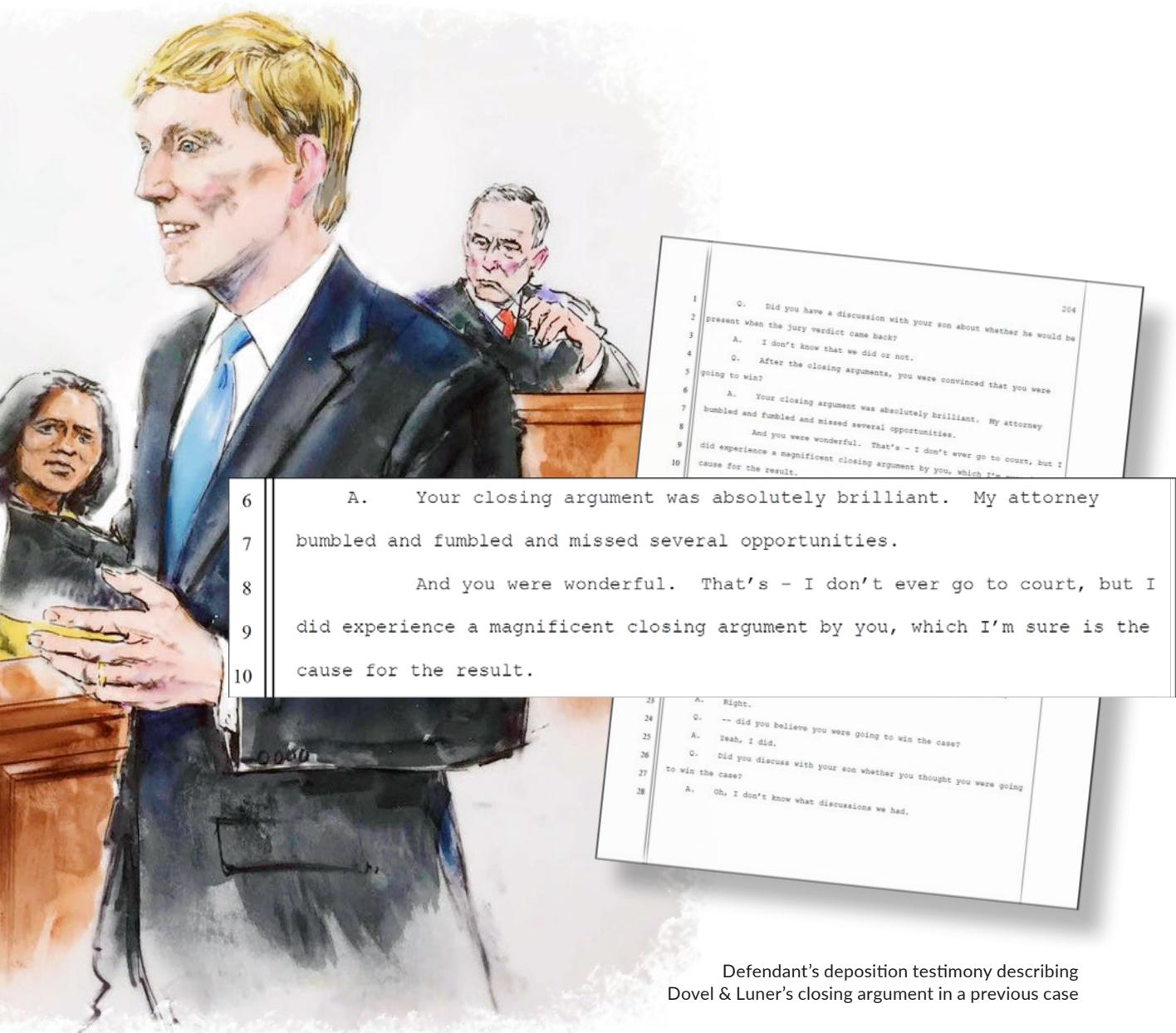
1 Hats off to Mr. Dovel. That is by far and away the most superb graphical
2 presentation I have ever seen. It is, obviously, something he put a great
3 deal of work into, and I am impressed, as I am sure you folks were as well,

11 THE CHAIRMAN: Lost the internet connection.
12 MR. MARSTON: I have done this before, of course, although
13 MR. QUINN: I have done this before, of course, although
14 MR. MARSTON: I have done this before, of course, although
15 MR. QUINN: I have done this before, of course, although
16 MR. MARSTON: I have done this before, of course, although
17 MR. QUINN: I have done this before, of course, although
18 MR. MARSTON: I have done this before, of course, although
19 MR. QUINN: I have done this before, of course, although
20 MR. MARSTON: I have done this before, of course, although
21 MR. QUINN: I have done this before, of course, although
22 MR. MARSTON: I have done this before, of course, although
23 MR. QUINN: I have done this before, of course, although
24 MR. MARSTON: I have done this before, of course, although
25 MR. QUINN: I have done this before, of course, although
26 MR. MARSTON: I have done this before, of course, although
27 MR. QUINN: I have done this before, of course, although
28 MR. MARSTON: I have done this before, of course, although



Defendant's closing argument
Sun Celebrity Holdings v. Celebrity, Inc.

What opponents say:



Case studies

A key test of our abilities

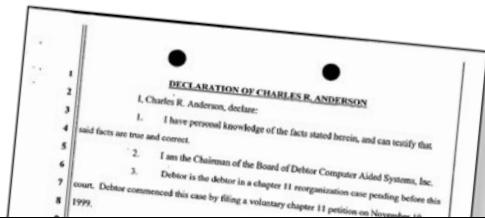
The acid test for a law firm is whether it can take over a case shortly before trial and win. Can the firm understand the nuances of the case, uncover new insights in the evidence and arguments, develop a solid damages analysis, finish any remaining depositions and expert reports, win the key motions, prepare winning trial examination outlines and visuals, and do so in only a very short period of time?

We can.



Case study 1

The client (CASI) went into bankruptcy. Lockheed sued the client and the client responded with its own counterclaims. After intensive litigation, the client did not have the money to continue to pursue its claim on an hourly basis. The trial was rapidly approaching.



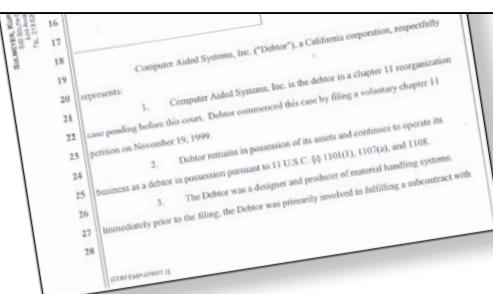
21 7. Debtor believes it is necessary to associate in special litigation counsel in
22 the Lockheed Action to work with Sulmeyer, Kupetz, Baumann & Rothman ("SKB&R") to bring
23 this case to trial. The depositions and documentary evidence in this case are voluminous and
24 complicated and will require substantial work to organize for trial.

21 7. Debtor believes it is necessary to associate in special litigation counsel in
22 the Lockheed Action to work with Sulmeyer, Kupetz, Baumann & Rothman ("SKB&R") to bring
23 this case to trial. The depositions and documentary evidence in this case are voluminous and
24 complicated and will require substantial work to organize for trial. The attorney at SKB&R who
25 is the lead litigator on the case recently lost his wife to breast cancer, has two teenage daughters
26 and will be unable to devote the time required to prepare this case for trial. The other attorneys at
27 the firm are extremely busy and unable to clear their schedules for the time commitment required
28 for this case. Moreover, this is the type of case which requires a litigation consulting firm to assist

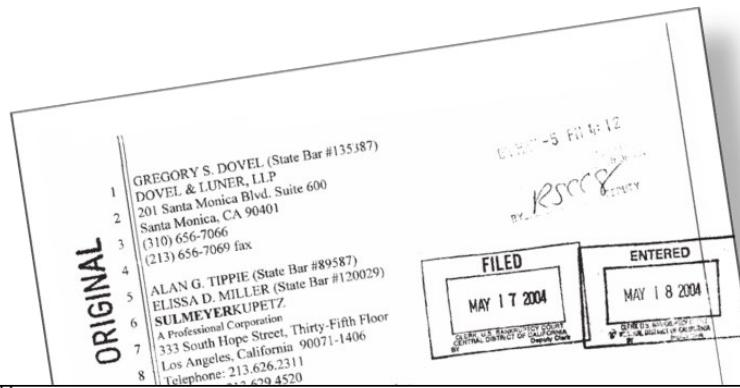
Who do you turn to as trial approaches?



20 6. CASI files this Application to retain Dovel & Luner ("Dovel") to take the
21 lead role. Dovel & Luner is a unique firm which specializes in involving itself in cases which are
22 near trial. Its lawyers have extensive trial experience.



The Result:



24 440. Based on the foregoing, CASI is entitled to recover from Lockheed a total of
25 \$13,746,477, as follows:

1 • \$7,164,318 in punitive damages resulting from Lockheed's fraudulent conduct
2 associated with the June 3 letter; plus

19 v.
20 COMPUTER AIDED SYSTEMS, INC.
21 Defendant.
22 COMPUTER AIDED SYSTEMS, INC.,
23 Counter-claimant and counter-
24 defendant.
25 v.
26 LOCKHEED MARTIN CORPORATION.
27 Counter-defendant and counter-
28 claimant.
[EDMPD:486808.1]

PSO

"Judges generally take away punitive damages awards.
It takes exceptional lawyering for a judge to award
punitive damages."

Judge Robert M. Parker,
U.S. Court of Appeals for the Fifth Circuit, retired.



DAILY JOURNAL EXTRA

LITIGATION FILES

Judge Orders Lockheed to Pay \$16.2 Million

By Eron Ben-Yehuda

A Los Angeles bankruptcy judge rebuked the Lockheed Martin Corp. recently, ordering the company to pay \$7 million in punitive damages on a fraud claim.

In his written opinion after a bench trial, U.S. Bankruptcy Judge Thomas B.

nesses often appeared to be evasive and to give less than candid testimony," the April 29 opinion stated. "When challenged on cross-examination with evidence that contradicted their previous written declaration, Lockheed witnesses sometimes appeared to respond with new, unconvincing testimony that seemed to be an attempt to cover up the contradictions in

on litigation, Lockheed Martin intends to appeal this decision," Jan Gottfredsen says. "We have no further comment."

Computer Aided System's attorney Gregory S. Dovel says he's struck by the candor of Donovan's decision.

"He didn't pull punches," says Dovel of Santa Monica's Dovel & Luner.

In 1998, Lockheed hired Computer

Case study 2

A high-stakes class action case alleging that the defendant violated the Telephone Consumer Protection Act was two months away from trial.

Who do you turn to as trial approaches?

Scott F. Kocher, OSB#015088
Stephen J. Voorhees, OSB#150595
DOVEL & LUNER GROUP
811 S.W. Naito Parkway, Suite 420
Portland, Oregon 97204
Tel: 503.445.2120
Fax: 503.445.2120

4. In preparation for the upcoming trial and in order to better serve Plaintiff and the Robocall Class, Class Counsel began working with attorneys at Dovel & Luner who have a well-known record of winning complex cases at trial. (*See generally*, Declaration of Jonas Jacobson.) Subsequently, Plaintiff retained Dovel and Luner to assist Class Counsel in the pursuit of her claims. (*Id.* ¶ 2.)

9. Greg Dovel, Jonas Jacobson, and Simon Franzini all have extensive experience in preparing and trying complex litigation in federal court. (*Id.* ¶ 3.)

UNOPPOSED MOTION TO APPOINT
CO-LEAD CLASS COUNSEL

The Result:

Bloomberg
Law®

Jury Reaches \$925 Million Verdict in Telemarketing Case

Posted April 15, 2019, 8:41 AM



A federal jury has ordered a multi-level marketing company to pay \$925 million for making nearly 2 million unsolicited telemarketing calls to consumers promoting weight-loss products.



We get **excellent results**

If you know of someone with a high value matter who needs elite contingency-fee counsel, we would appreciate your referral.

EXHIBIT 2

DOVEL & LUNER, LLP - RugsUSA

| Expense Date | Invoice Id | Client | Project | Expense Type | Description | Cost |
|--------------|----------------|----------------|------------------------------|------------------------------|---|---------------------------------|
| 04/12/2023 | Fake discounts | RugsUSA | Other | | NJ Business Services. Entity info research. | \$0.10 |
| 04/12/2023 | Fake discounts | RugsUSA | Other | | NJ Business Services. Entity info research. | \$6.25 |
| 04/14/2023 | Fake discounts | RugsUSA | Mailing/Postage | | US Postal Service. Certified Mail for mailing class action notice letters. | \$22.53 |
| 04/21/2023 | Fake discounts | RugsUSA | Mailing/Postage | | FedEx. Priority overnight shipping. Invoice no. 8-107-35537. | \$118.67 |
| 04/22/2023 | Fake discounts | RugsUSA | Court Fees | | United States District Court for the Central Court of California. Case filing fee. | \$402.00 |
| 05/05/2023 | | Fake discounts | RugsUSA | Delivery Services/Messengers | ACE Attorney Service. Delivering complaint to registered agent/defendant. Invoice no. 522378. | \$93.99 |
| 05/06/2023 | Fake discounts | RugsUSA | Mailing/Postage | | US Postal Service. Mailing notice letters. | \$30.04 |
| 05/12/2023 | Fake discounts | RugsUSA | Mailing/Postage | | FedEx. Priority overnight shipping. Invoice no. 8-129-09420. | \$29.43 |
| 05/12/2023 | Fake discounts | RugsUSA | Mailing/Postage | | FedEx. Priority overnight shipping. Invoice no. 8-129-09420. | \$37.34 |
| 05/12/2023 | Fake discounts | RugsUSA | Mailing/Postage | | FedEx. Priority overnight shipping. Invoice no. 8-129-09420. | \$58.34 |
| 05/12/2023 | Fake discounts | RugsUSA | Mailing/Postage | | FedEx. Priority overnight shipping. Invoice no. 8-129-09420. (2) | \$29.43 |
| 05/18/2023 | | Fake discounts | RugsUSA | Court Fees | United States District Court for the Northern District of California. Case filing fee. | \$402.00 |
| 05/18/2023 | Fake discounts | RugsUSA | | | US Postal Service. Mailing notice letters. | \$23.97 |
| 05/19/2023 | | Fake discounts | RugsUSA | Mailing/Postage | ACE Attorney Service. Delivering complaint to registered agent/defendant. Invoice no. 524595. | \$78.74 |
| 05/20/2023 | Fake discounts | RugsUSA | Delivery services/Messengers | | ABC Legal. Service of process fee. | \$75.00 |
| 05/31/2023 | Fake discounts | RugsUSA | | Delivery services/Messengers | ACE Attorney Service. Delivering complaint to registered agent/defendant. Invoice no. 527622. | \$121.74 |
| 06/03/2023 | Fake discounts | RugsUSA | Mailing/Postage | | US Postal Service. Mailing notice letters. | \$7.51 |
| 06/23/2023 | Fake discounts | RugsUSA | Mailing/Postage | | FedEx. Express shipping. Invoice no. 8-172-06759. | \$25.00 |
| 07/13/2023 | Fake discounts | RugsUSA | Delivery services/Messengers | | ABC Legal. Service of process fee. | \$75.00 |
| 07/15/2023 | Fake discounts | RugsUSA | Mailing/Postage | | US Postal Service. Mailing notice letters. | \$30.91 |
| 07/15/2023 | Fake discounts | RugsUSA | Mailing/Postage | | US Postal Service. Mailing notice letters. | \$7.69 |
| 08/11/2023 | Fake discounts | RugsUSA | Mailing/Postage | | FedEx. Express shipping. Invoice no. 8-221-20445. | \$29.95 |
| 08/11/2023 | Fake discounts | RugsUSA | Mailing/Postage | | FedEx. Express shipping. Invoice no. 8-221-20445. | \$37.99 |
| 08/25/2023 | Fake discounts | RugsUSA | Court Fees | | Carson Noel PLLC. Filing fees. Invoice no. 014118. | \$402.00 |
| 09/25/2023 | Fake discounts | RugsUSA | Court Fees | | Carson Noel, PLLC. Filing fees and other expenses. Invoice no. 014278. | \$640.00 |
| 09/28/2023 | Fake discounts | RugsUSA | | Arbitrators/Mediators | Signature Resolution. Mediation services by Hon. Louis Meisinger. Invoice no. 52232. | \$17,950.00 |
| 11/01/2023 | Fake discounts | RugsUSA | Printing/Copying | | In house color photocopies for the month of October. | \$3.84 |
| 11/01/2023 | Fake discounts | RugsUSA | Printing/Copying | | In house black and white photocopies for the month of October. | \$0.96 |
| 11/10/2023 | Fake discounts | RugsUSA | Travel/Lodging | | Uber. Rideshare for mediation, (C. Cheng). | \$25.08 |
| 11/10/2023 | Fake discounts | RugsUSA | Travel/Lodging | | Uber. Rideshare for mediation, (C. Cheng). | \$26.36 |
| 11/14/2023 | Fake discounts | RugsUSA | Travel/Lodging | | Century Plaza Tower Park. Parking for mediation, (S. Franzini). | \$40.00 |
| 11/30/2023 | Fake discounts | RugsUSA | Expert Fees | | Colin Weir Expert Costs. Invoice no. 202308584 | \$3,825.00 |
| 11/30/2023 | Fake discounts | RugsUSA | Expert Fees | | Bruce Silverman Expert Costs. Invoice no. 2023-39. | \$3,450.00 |
| | | | | | | Total Amount \$28,106.86 |

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

CHRISTINA WILEY, ALEXANDRIA LEE,
TAWNEY BRIGGS, and CHRISTOPHER
KORDA, each individually and on behalf of all
others similarly situated,

Case No. 6:23-cv-03250-SRB

Plaintiffs,

v.

RUGSUSA, LLC,

Defendant.

**DECLARATION OF JULIAN C. DIAMOND
IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS,
EXPENSES, AND INCENTIVE AWARDS**

I, Julian C. Diamond, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an attorney at Burson & Fisher, P.A., counsel of record for Plaintiffs in this action. I am an attorney at law licensed to practice in the State of New York and I am admitted in this matter *pro hac vice*. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently thereto.

2. I make this declaration in support of Plaintiffs' motion for attorneys' fees, costs, expenses, and incentive awards filed herewith.

3. Beginning in April 2024, my firm commenced a pre-suit investigation of Defendant's sales practices.

4. My firm interviewed multiple RugsUSA customers to gather information about Defendant's business practices and their potential impact upon consumers, which was essential to counsels' ability to understand the nature of the potential claims and issues.

5. My firm expended significant resources researching and developing the legal

claims at issue.

6. On July 13, 2023, Plaintiff Christopher Korda filed a putative class action against Defendant in the United Stated District Court for the District of Oregon asserting claims under Oregon's Unlawful Trade Practices Act as well as for fraud and unjust enrichment. *See Korda v. RugsUSA, LLC*, 3:23-cv-01026-AR (D. Or.).

7. On August 11, 2023, Plaintiff Christina Wiley filed the instant substantially similar matter in this Court.

8. For a fulsome description of Class Counsel's efforts please see the Declaration of Simon Franzini filed herewith.

9. Plaintiffs and Class Counsel believe that the monetary relief provided by the Settlement weighs heavily in favor of a finding that the Settlement is fair, reasonable, and adequate, and well within the range of approval.

10. To date, my firm has also expended \$1,652.44 in out-of-pocket costs and expenses in connection with the prosecution of this case. Attached as **Exhibit 2** is an itemized list of those costs and expenses. These costs and expenses are reflected in the records of my firm and were necessary to prosecute this litigation.

11. My firm, Burson & Fisher, P.A., has significant experience in litigating class actions of similar size, scope, and complexity to the instant action. (*See Exhibit 1*; Firm Resume of Burson & Fisher, P.A.). We have been appointed lead counsel in numerous consumer class actions across the United States. *See e.g. Gregorio v. Premier Nutrition Corp.*, Case No. 17-cv-05987-AT (S.D.N.Y) (\$9 million class-wide settlement); *In re: NVIDIA GTX Graphics Chip Litig.*, Case No. 4:15-cv-00760 (N.D. Cal.) (\$4.5 million class-wide settlement); *Retta v. Millennium Products, Inc.*, Case No. 2:15-cv-1801(C.D. Cal.) (\$8.25 million class-wide

settlement); *Gastelum v. Verizon*, Case No. CGC 11-511467 (S.F. Superior Court) (\$10.9 million class-wide settlement); *Forcellati v. Hyland's*, Case No. 2:12-cv-01983 (C.D. Cal.) (nationwide class settlement valued at up to \$11.6 million); *Melgar v. Zicam*, Case No. 2:14-cv-00160 (E.D. Cal.) (\$16 million class-wide settlement); *Edwards v. Hearst Communications, Inc.*, Case No. 15-cv-09279-AT (S.D.N.Y.) (\$50 million class wide settlement); *Moeller v. American Media, Inc.*, Case No. 16-cv-11367-JEL (E.D. Mich.); *Ruppel v. Consumers Union of United States, Inc.*, Case No. 16-cv-02444-KMK (S.D.N.Y.) (\$16.375 million class-wide settlement).

12. Additionally, my firm has also been recognized by courts across the country for its expertise in consumer class action lawsuits. *See Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561, 566 (S.D.N.Y. Feb. 25, 2014) (Rakoff, J.) (“Burson & Fisher, P.A., are class action lawyers who have experience litigating consumer claims. ... The firm has been appointed class counsel in dozens of cases in both federal and state courts, and has won multi-million dollar verdicts or recoveries in five class action jury trials since 2008.”)¹; *In re Michaels Stores Pin Pad Litigation*, Case No. 11-cv-03350, ECF No. 22 (N.D. Ill. June 8, 2011) (appointing Burson & Fisher class counsel to represent a putative nationwide class of consumers who made in-store purchases at Michaels using a debit or credit card and had their private financial information breached as a result).

13. Moreover, my firm has served as trial counsel for class action plaintiffs in six jury trials and has won all six, with recoveries ranging from \$21 million to \$299 million.

¹ Burson & Fisher has since won a sixth jury verdict in *Perez v. Rash Curtis & Associates*, Case No. 4:16-cv-03396-YGR (N.D. Cal.), for \$267 million.

I declare under penalty of perjury that the above and foregoing is true and accurate.

Executed this 3rd day of April 2024 at New York, New York.

/s/ Julian C. Diamond
Julian C. Diamond

EXHIBIT 1

Case 6:23-cv-03250-SRB Document 36-2 Filed 04/12/24 Page 5 of 38



www.bursor.com

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MIAMI, FL 33131

1330 AVENUE OF THE AMERICAS
NEW YORK, NY 10019

1990 NORTH CALIFORNIA BLVD.
WALNUT CREEK, CA 94596

FIRM RESUME

With offices in Florida, New York, and California, BURSOR & FISHER lawyers have represented both plaintiffs and defendants in state and federal courts throughout the country.

The lawyers at our firm have an active civil trial practice, having won multi-million-dollar verdicts or recoveries in six of six class action jury trials since 2008. Our most recent class action trial victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector found to have violated the Telephone Consumer Protection Act. During the pendency of the defendant's appeal, the case settled for \$75.6 million, the largest settlement in the history of the Telephone Consumer Protection Act.

In August 2013 in *Ayyad v. Sprint Spectrum L.P.*, in which Mr. Bursor served as lead trial counsel, we won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc. (II)*, we obtained a \$50 million jury verdict in favor of a certified class of 150,000 purchasers of the Avacor Hair Regrowth System. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009, and the largest in any class action.

The lawyers at our firm have an active class action practice and have won numerous appointments as class counsel to represent millions of class members, including customers of Honda, Verizon Wireless, AT&T Wireless, Sprint, Haier America, and Michaels Stores as well as purchasers of Avacor™, Hydroxycut, and Sensa™ products. Bursor & Fisher lawyers have been court-appointed Class Counsel or Interim Class Counsel in:

1. *O'Brien v. LG Electronics USA, Inc.* (D.N.J. Dec. 16, 2010) to represent a certified nationwide class of purchasers of LG French-door refrigerators,
2. *Ramundo v. Michaels Stores, Inc.* (N.D. Ill. June 8, 2011) to represent a certified nationwide class of consumers who made in-store purchases at Michaels Stores using a debit or credit card and had their private financial information stolen as a result,
3. *In re Haier Freezer Consumer Litig.* (N.D. Cal. Aug. 17, 2011) to represent a certified class of purchasers of mislabeled freezers from Haier America Trading, LLC,
4. *Rodriguez v. CitiMortgage, Inc.* (S.D.N.Y. Nov. 14, 2011) to represent a certified nationwide class of military personnel against CitiMortgage for illegal foreclosures,

5. *Rossi v. The Procter & Gamble Co.* (D.N.J. Jan. 31, 2012) to represent a certified nationwide class of purchasers of Crest Sensitivity Treatment & Protection toothpaste,
6. *Dzielak v. Whirlpool Corp. et al.* (D.N.J. Feb. 21, 2012) to represent a proposed nationwide class of purchasers of mislabeled Maytag Centennial washing machines from Whirlpool Corp., Sears, and other retailers,
7. *In re Sensa Weight Loss Litig.* (N.D. Cal. Mar. 2, 2012) to represent a certified nationwide class of purchasers of Sensa weight loss products,
8. *In re Sinus Buster Products Consumer Litig.* (E.D.N.Y. Dec. 17, 2012) to represent a certified nationwide class of purchasers,
9. *Ebin v. Kangadis Food Inc.* (S.D.N.Y. Feb. 25, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
10. *Forcellati v. Hyland's, Inc.* (C.D. Cal. Apr. 9, 2014) to represent a certified nationwide class of purchasers of children's homeopathic cold and flu remedies,
11. *Ebin v. Kangadis Family Management LLC, et al.* (S.D.N.Y. Sept. 18, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
12. *In re Scotts EZ Seed Litig.* (S.D.N.Y. Jan. 26, 2015) to represent a certified class of purchasers of Scotts Turf Builder EZ Seed,
13. *Dei Rossi v. Whirlpool Corp., et al.* (E.D. Cal. Apr. 28, 2015) to represent a certified class of purchasers of mislabeled KitchenAid refrigerators from Whirlpool Corp., Best Buy, and other retailers,
14. *Hendricks v. StarKist Co.* (N.D. Cal. July 23, 2015) to represent a certified nationwide class of purchasers of StarKist tuna products,
15. *In re NVIDIA GTX 970 Graphics Card Litig.* (N.D. Cal. May 8, 2015) to represent a proposed nationwide class of purchasers of NVIDIA GTX 970 graphics cards,
16. *Melgar v. Zicam LLC, et al.* (E.D. Cal. March 30, 2016) to represent a certified ten-jurisdiction class of purchasers of Zicam Pre-Cold products,
17. *In re Trader Joe's Tuna Litigation* (C.D. Cal. December 21, 2016) to represent purchaser of allegedly underfilled Trader Joe's canned tuna.
18. *In re Welspun Litigation* (S.D.N.Y. January 26, 2017) to represent a proposed nationwide class of purchasers of Welspun Egyptian cotton bedding products,
19. *Retta v. Millennium Products, Inc.* (C.D. Cal. January 31, 2017) to represent a certified nationwide class of Millennium kombucha beverages,
20. *Moeller v. American Media, Inc.*, (E.D. Mich. June 8, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
21. *Hart v. BHH, LLC* (S.D.N.Y. July 7, 2017) to represent a nationwide class of purchasers of Bell & Howell ultrasonic pest repellers,
22. *McMillion v. Rash Curtis & Associates* (N.D. Cal. September 6, 2017) to represent a certified nationwide class of individuals who received calls from Rash Curtis & Associates,

23. *Lucero v. Solarcity Corp.* (N.D. Cal. September 15, 2017) to represent a certified nationwide class of individuals who received telemarketing calls from Solarcity Corp.,
24. *Taylor v. Trusted Media Brands, Inc.* (S.D.N.Y. Oct. 17, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
25. *Gasser v. Kiss My Face, LLC* (N.D. Cal. Oct. 23, 2017) to represent a proposed nationwide class of purchasers of cosmetic products,
26. *Gastelum v. Frontier California Inc.* (S.F. Superior Court February 21, 2018) to represent a certified California class of Frontier landline telephone customers who were charged late fees,
27. *Williams v. Facebook, Inc.* (N.D. Cal. June 26, 2018) to represent a proposed nationwide class of Facebook users for alleged privacy violations,
28. *Ruppel v. Consumers Union of United States, Inc.* (S.D.N.Y. July 27, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
29. *Bayol v. Health-Ade* (N.D. Cal. August 23, 2018) to represent a proposed nationwide class of Health-Ade kombucha beverage purchasers,
30. *West v. California Service Bureau* (N.D. Cal. September 12, 2018) to represent a certified nationwide class of individuals who received calls from California Service Bureau,
31. *Gregorio v. Premier Nutrition Corporation* (S.D.N.Y. Sept. 14, 2018) to represent a nationwide class of purchasers of protein shake products,
32. *Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast* (S.D.N.Y. Oct. 24, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
33. *Bakov v. Consolidated World Travel Inc. d/b/a Holiday Cruise Line* (N.D. Ill. Mar. 21, 2019) to represent a certified class of individuals who received calls from Holiday Cruise Line,
34. *Martinelli v. Johnson & Johnson* (E.D. Cal. March 29, 2019) to represent a certified class of purchasers of Benecol spreads labeled with the representation “No Trans Fat,”
35. *Edwards v. Hearst Communications, Inc.* (S.D.N.Y. April 24, 2019) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
36. *Galvan v. Smashburger* (C.D. Cal. June 25, 2019) to represent a proposed class of purchasers of Smashburger’s “Triple Double” burger,
37. *Kokoszki v. Playboy Enterprises, Inc.* (E.D. Mich. Feb. 7, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
38. *Russett v. The Northwestern Mutual Life Insurance Co.* (S.D.N.Y. May 28, 2020) to represent a class of insurance policyholders that were allegedly charged unlawful paper billing fees,
39. *In re: Metformin Marketing and Sales Practices Litigation* (D.N.J. June 3, 2020) to represent a proposed nationwide class of purchasers of generic diabetes medications that were contaminated with a cancer-causing carcinogen,

40. *Hill v. Spirit Airlines, Inc.* (S.D. Fla. July 21, 2020) to represent a proposed nationwide class of passengers whose flights were cancelled by Spirit Airlines due to the novel coronavirus, COVID-19, and whose tickets were not refunded,
41. *Kramer v. Alterra Mountain Co.* (D. Colo. July 31, 2020) to represent a proposed nationwide class of purchasers to recoup the unused value of their Ikon ski passes after Alterra suspended operations at its ski resorts due to the novel coronavirus, COVID-19,
42. *Qureshi v. American University* (D.D.C. July 31, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by American University due to the novel coronavirus, COVID-19,
43. *Hufford v. Maxim Inc.* (S.D.N.Y. Aug. 13, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
44. *Desai v. Carnegie Mellon University* (W.D. Pa. Aug. 26, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Carnegie Mellon University due to the novel coronavirus, COVID-19,
45. *Heigl v. Waste Management of New York, LLC* (E.D.N.Y. Aug. 27, 2020) to represent a class of waste collection customers that were allegedly charged unlawful paper billing fees,
46. *Stellato v. Hofstra University* (E.D.N.Y. Sept. 18, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Hofstra University due to the novel coronavirus, COVID-19,
47. *Kaupelis v. Harbor Freight Tools USA, Inc.* (C.D. Cal. Sept. 23, 2020), to represent consumers who purchased defective chainsaws,
48. *Soo v. Lorex Corporation* (N.D. Cal. Sept. 23, 2020), to represent consumers whose security cameras were intentionally rendered non-functional by manufacturer,
49. *Miranda v. Golden Entertainment (NV), Inc.* (D. Nev. Dec. 17, 2020), to represent consumers and employees whose personal information was exposed in a data breach,
50. *Benbow v. SmileDirectClub, Inc.* (Cir. Ct. Cook Cnty. Feb. 4, 2021), to represent a certified nationwide class of individuals who received text messages from SmileDirectClub, in alleged violation of the Telephone Consumer Protection Act,
51. *Suren v. DSV Solutions, LLC* (Cir. Ct. DuPage Cnty. Apr. 8, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
52. *De Lacour v. Colgate-Palmolive Co.* (S.D.N.Y. Apr. 23, 2021), to represent a certified class of consumers who purchased allegedly “natural” Tom’s of Maine products,
53. *Wright v. Southern New Hampshire University* (D.N.H. Apr. 26, 2021), to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Southern New Hampshire University due to the novel coronavirus, COVID-19,

54. *Sahlin v. Hospital Housekeeping Systems, LLC* (Cir. Ct. Williamson Cnty. May 21, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
55. *Landreth v. Verano Holdings LLC, et al.* (Cir. Ct. Cook Cnty. June 2, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act.
56. *Rocchio v. Rutgers, The State University of New Jersey*, (Sup. Ct., Middlesex Cnty. October 27, 2021), to represent a certified nationwide class of students for fee refunds after their classes were moved online by Rutgers due to the novel coronavirus, COVID-19,
57. *Malone v. Western Digital Corp.*, (N.D. Cal. Dec. 22, 2021), to represent a class of consumers who purchased hard drives that were allegedly deceptively advertised,
58. *Jenkins v. Charles Industries, LLC*, (Cir. Ct. DuPage Cnty. Dec. 21, 2021) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
59. *Frederick v. Examsoft Worldwide, Inc.*, (Cir. Ct. DuPage Cnty. Jan. 6, 2022) to represent a certified class of exam takers who used virtual exam proctoring software, in alleged violation of the Illinois Biometric Information Privacy Act,
60. *Isaacson v. Liqui-Box Flexibles, LLC, et al.*, (Cir. Ct. Will Cnty. Jan. 18, 2022) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
61. *Goldstein et al. v. Henkel Corp.*, (D. Conn. Mar. 3, 2022) to represent a proposed class of purchasers of Right Guard-brand antiperspirants that were allegedly contaminated with benzene,
62. *McCall v. Hercules Corp.*, (N.Y. Sup. Ct., Westchester Cnty. Mar. 14, 2022) to represent a certified class of laundry card purchasers who were allegedly subjected to deceptive practices by being denied cash refunds,
63. *Lewis v. Trident Manufacturing, Inc.*, (Cir. Ct. Kane Cnty. Mar. 16, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
64. *Croft v. Spinx Games Limited, et al.*, (W.D. Wash. Mar. 31, 2022) to represent a certified class of Washington residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Washington law,
65. *Fischer v. Instant Checkmate LLC*, (N.D. Ill. Mar. 31, 2022) to represent a certified class of Illinois residents whose identities were allegedly used without their consent in alleged violation of the Illinois Right of Publicity Act,
66. *Rivera v. Google LLC*, (Cir. Ct. Cook Cnty. Apr. 25, 2022) to represent a certified class of Illinois residents who appeared in a photograph in Google Photos, in alleged violation of the Illinois Biometric Information Privacy Act,
67. *Loftus v. Outside Integrated Media, LLC*, (E.D. Mich. May 5, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,

68. *D'Amario v. The University of Tampa*, (S.D.N.Y. June 3, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by The University of Tampa due to the novel coronavirus, COVID-19,
69. *Fittipaldi v. Monmouth University*, (D.N.J. Sept. 22, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Monmouth University due to the novel coronavirus, COVID-19,
70. *Armstead v. VGW Malta Ltd. et al.* (Cir. Ct. Henderson Cnty. Oct. 3, 2022) to present a certified class of Kentucky residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Kentucky law,
71. *Cruz v. The Connor Group, A Real Estate Investment Firm, LLC*, (N.D. Ill. Oct. 26, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act;
72. *Delcid et al. v. TCP HOT Acquisitions LLC et al.* (S.D.N.Y. Oct. 28, 2022) to represent a certified nationwide class of purchasers of Sure and Brut-brand antiperspirants that were allegedly contaminated with benzene,
73. *Kain v. The Economist Newspaper NA, Inc.* (E.D. Mich. Dec. 15, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
74. *Strano v. Kiplinger Washington Editors, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
75. *Moeller v. The Week Publications, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act.
76. *Ambrose v. Boston Globe Media Partners, LLC* (D. Mass. May 25, 2023) to represent a class of newspaper subscribers who were also Facebook users under the Video Privacy Protection Act.
77. *In re: Apple Data Privacy Litigation*, (N.D. Cal. July 5, 2023) to represent a putative nationwide class of all persons who turned off permissions for data tracking and whose mobile app activity was still tracked on iPhone mobile devices.
78. *Pratt v. KSE Sportsman Media, Inc.* (E.D. Mich. Aug. 25, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act.

SCOTT A. BURSOR

Mr. Bursor has an active civil trial practice, having won multi-million verdicts or recoveries in six of six civil jury trials since 2008. Mr. Bursor's most recent victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector for violations of the Telephone Consumer Protection Act (TCPA).

In *Ayyad v. Sprint Spectrum L.P.* (2013), where Mr. Burson served as lead trial counsel, the jury returned a verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc.* (2009), the jury returned a \$50 million verdict in favor of the plaintiff and class represented by Mr. Burson. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009.

Class actions are rarely tried to verdict. Other than Mr. Burson and his partner Mr. Fisher, we know of no lawyer that has tried more than one class action to a jury. Mr. Burson's perfect record of six wins in six class action jury trials, with recoveries ranging from \$21 million to \$299 million, is unmatched by any other lawyer. Each of these victories was hard-fought against top trial lawyers from the biggest law firms in the United States.

Mr. Burson graduated from the University of Texas Law School in 1996. He served as Articles Editor of the Texas Law Review, and was a member of the Board of Advocates and Order of the Coif. Prior to starting his own practice, Mr. Burson was a litigation associate at a large New York based law firm where he represented telecommunications, pharmaceutical, and technology companies in commercial litigation.

Mr. Burson is a member of the state bars of New York, Florida, and California, as well as the bars of the United States Court of Appeals for the Second, Third, Fourth, Sixth, Ninth and Eleventh Circuits, and the bars of the United States District Courts for the Southern and Eastern Districts of New York, the Northern, Central, Southern and Eastern Districts of California, the Southern and Middle Districts of Florida, and the Eastern District of Michigan.

Representative Cases

Mr. Burson was appointed lead or co-lead class counsel to the largest, 2nd largest, and 3rd largest classes ever certified. Mr. Burson has represented classes including more than 160 million class members, roughly 1 of every 2 Americans. Listed below are recent cases that are representative of Mr. Burson's practice:

Mr. Burson negotiated and obtained court-approval for two landmark settlements in *Nguyen v. Verizon Wireless* and *Zill v. Sprint Spectrum* (the largest and 2nd largest classes ever certified). These settlements required Verizon and Sprint to open their wireless networks to third-party devices and applications. These settlements are believed to be the most significant legal development affecting the telecommunications industry since 1968, when the FCC's Carterfone decision similarly opened up AT&T's wireline telephone network.

Mr. Burson was the lead trial lawyer in *Ayyad v. Sprint Spectrum, L.P.* representing a class of approximately 2 million California consumers who were charged an early termination fee under a Sprint cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. After a five-week combined bench-and-jury trial, the jury returned a verdict in June 2008 and the Court issued a Statement of Decision in December 2008 awarding the plaintiffs \$299 million in cash and debt cancellation. Mr. Burson served as lead trial counsel for this class again in 2013.

during a month-long jury trial in which Sprint asserted a \$1.06 billion counterclaim against the class. Mr. Bursor secured a verdict awarding Sprint only \$18.4 million, the exact amount calculated by the class's damages expert. This award was less than 2% of the damages Sprint sought, less than 6% of the amount of the illegal termination fees Sprint charged to class members. In December 2016, after more than 13 years of litigation, the case was settled for \$304 million, including \$79 million in cash payments plus \$225 million in debt cancellation.

Mr. Bursor was the lead trial lawyer in *White v. Cellco Partnership d/b/a Verizon Wireless* representing a class of approximately 1.4 million California consumers who were charged an early termination fee under a Verizon cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. In July 2008, after Mr. Bursor presented plaintiffs' case-in-chief, rested, then cross-examined Verizon's principal trial witness, Verizon agreed to settle the case for a \$21 million cash payment and an injunction restricting Verizon's ability to impose early termination fees in future subscriber agreements.

Mr. Bursor was the lead trial lawyer in *Thomas v. Global Visions Products Inc.* Mr. Bursor represented a class of approximately 150,000 California consumers who had purchased the Avacor® hair regrowth system. In January 2008, after a four-week combined bench-and-jury trial. Mr. Bursor obtained a \$37 million verdict for the class, which the Court later increased to \$40 million.

Mr. Bursor was appointed class counsel and was elected chair of the Official Creditors' Committee in *In re Nutraquest Inc.*, a Chapter 11 bankruptcy case before Chief Judge Garrett E. Brown, Jr. (D.N.J.) involving 390 ephedra-related personal injury and/or wrongful death claims, two consumer class actions, four enforcement actions by governmental agencies, and multiple adversary proceedings related to the Chapter 11 case. Working closely with counsel for all parties and with two mediators, Judge Nicholas Politan (Ret.) and Judge Marina Corodemus (Ret.), the committee chaired by Mr. Bursor was able to settle or otherwise resolve every claim and reach a fully consensual Chapter 11 plan of reorganization, which Chief Judge Brown approved in late 2006. This settlement included a \$12.8 million recovery to a nationwide class of consumers who alleged they were defrauded in connection with the purchase of Xenadrine® dietary supplement products.

Mr. Bursor was the lead trial lawyer in *In re: Pacific Bell Late Fee Litigation*. After filing the first class action challenging Pac Bell's late fees in April 2010, winning a contested motion to certify a statewide California class in January 2012, and defeating Pac Bell's motion for summary judgment in February 2013, Mr. Bursor obtained final approval of the \$38 million class settlement. The settlement, which Mr. Bursor negotiated the night before opening statements were scheduled to commence, included a \$20 million cash payment to provide refunds to California customers who paid late fees on their Pac Bell wireline telephone accounts, and an injunction that reduced other late fee charges by \$18.6 million.

L. TIMOTHY FISHER

L. Timothy Fisher has an active practice in consumer class actions and complex business litigation and has also successfully handled a large number of civil appeals.

Mr. Fisher has been actively involved in numerous cases that resulted in multi-million dollar recoveries for consumers and investors. Mr. Fisher has handled cases involving a wide range of issues including nutritional labeling, health care, telecommunications, corporate governance, unfair business practices and consumer fraud. With his partner Scott A. Burson, Mr. Fisher has tried five class action jury trials, all of which produced successful results. In *Thomas v. Global Vision Products*, Mr. Fisher obtained a jury award of \$50,024,611 — the largest class action award in California in 2009 and the second-largest jury award of any kind. In 2019, Mr. Fisher served as trial counsel with Mr. Burson and his partner Yeremey Krivoshey in *Perez v. Rash Curtis & Associates*, where the jury returned a verdict for \$267 million in statutory damages under the Telephone Consumer Protection Act.

Mr. Fisher was admitted to the State Bar of California in 1997. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit, the United States District Courts for the Northern, Central, Southern and Eastern Districts of California, the Northern District of Illinois, the Eastern District of Michigan, and the Eastern District of Missouri. Mr. Fisher taught appellate advocacy at John F. Kennedy University School of Law in 2003 and 2004. In 2010, he contributed jury instructions, a verdict form and comments to the consumer protection chapter of Justice Elizabeth A. Baron's *California Civil Jury Instruction Companion Handbook* (West 2010). In January 2014, Chief Judge Claudia Wilken of the United States District Court for the Northern District of California appointed Mr. Fisher to a four-year term as a member of the Court's Standing Committee on Professional Conduct.

Mr. Fisher received his Juris Doctor from Boalt Hall at the University of California at Berkeley in 1997. While in law school, he was an active member of the Moot Court Board and participated in moot court competitions throughout the United States. In 1994, Mr. Fisher received an award for Best Oral Argument in the first-year moot court competition.

In 1992, Mr. Fisher graduated with highest honors from the University of California at Berkeley and received a degree in political science. Prior to graduation, he authored an honors thesis for Professor Bruce Cain entitled "The Role of Minorities on the Los Angeles City Council." He is also a member of Phi Beta Kappa.

Representative Cases

Thomas v. Global Vision Products, Inc. (Alameda County Superior Court). Mr. Fisher litigated claims against Global Vision Products, Inc. and other individuals in connection with the sale and marketing of a purported hair loss remedy known as Avacor. The case lasted more than seven years and involved two trials. The first trial resulted in a verdict for plaintiff and the class in the amount of \$40,000,000. The second trial resulted in a jury verdict of \$50,024,611, which led to a \$30 million settlement for the class.

In re Cellphone Termination Fee Cases - Handset Locking Actions (Alameda County Superior Court). Mr. Fisher actively worked on five coordinated cases challenging the secret locking of cell phone handsets by major wireless carriers to prevent consumers from activating them on competitive carriers' systems. Settlements have been approved in all five cases on terms that require the cell phone carriers to disclose their handset locks to consumers and to provide unlocking codes nationwide on reasonable terms and conditions. The settlements fundamentally

changed the landscape for cell phone consumers regarding the locking and unlocking of cell phone handsets.

In re Cellphone Termination Fee Cases - Early Termination Fee Cases (Alameda County Superior Court and Federal Communications Commission). In separate cases that are a part of the same coordinated litigation as the Handset Locking Actions, Mr. Fisher actively worked on claims challenging the validity under California law of early termination fees imposed by national cell phone carriers. In one of those cases, against Verizon Wireless, a nationwide settlement was reached after three weeks of trial in the amount of \$21 million. In a second case, which was tried to verdict, the Court held after trial that the \$73 million of flat early termination fees that Sprint had collected from California consumers over an eight-year period were void and unenforceable.

Selected Published Decisions

Melgar v. Zicam LLC, 2016 WL 1267870 (E.D. Cal. Mar. 30, 2016) (certifying 10-jurisdiction class of purchasers of cold remedies, denying motion for summary judgment, and denying motions to exclude plaintiff's expert witnesses).

Salazar v. Honest Tea, Inc., 2015 WL 7017050 (E.D. Cal. Nov. 12, 2015) (denying motion for summary judgment).

Dei Rossi v. Whirlpool Corp., 2015 WL 1932484 (E.D. Cal. Apr. 27, 2015) (certifying California class of purchasers of refrigerators that were mislabeled as Energy Star qualified).

Bayol v. Zipcar, Inc., 78 F.Supp.3d 1252 (N.D. Cal. 2015) (denying motion to dismiss claims alleging unlawful late fees under California Civil Code § 1671).

Forcellati v. Hyland's, Inc., 2015 WL 9685557 (C.D. Cal. Jan. 12, 2015) (denying motion for summary judgment in case alleging false advertising of homeopathic cold and flu remedies for children).

Bayol v. Zipcar, Inc., 2014 WL 4793935 (N.D. Cal. Sept. 25, 2014) (denying motion to transfer venue pursuant to a forum selection clause).

Forcellati v. Hyland's Inc., 2014 WL 1410264 (C.D. Cal. Apr. 9, 2014) (certifying nationwide class of purchasers of homeopathic cold and flu remedies for children).

Hendricks v. StarKist Co., 30 F.Supp.3d 917 (N.D. Cal. 2014) (denying motion to dismiss in case alleging underfilling of 5-ounce cans of tuna).

Dei Rossi v. Whirlpool Corp., 2013 WL 5781673 (E.D. Cal. October 25, 2013) (denying motion to dismiss in case alleging that certain KitchenAid refrigerators were misrepresented as Energy Star qualified).

Forcellati v. Hyland's Inc., 876 F.Supp.2d 1155 (C.D. Cal. 2012) (denying motion to dismiss complaint alleging false advertising regarding homeopathic cold and flu remedies for children).

Clerkin v. MyLife.com, 2011 WL 3809912 (N.D. Cal. August 29, 2011) (denying defendants' motion to dismiss in case alleging false and misleading advertising by a social networking company).

In re Cellphone Termination Fee Cases, 186 Cal.App.4th 1380 (2010) (affirming order approving \$21 million class action settlement).

Gatton v. T-Mobile USA, Inc., 152 Cal.App.4th 571 (2007) (affirming order denying motion to compel arbitration).

Selected Class Settlements

Melgar v. Zicam (Eastern District of California) - \$16 million class settlement of claims alleging cold medicine was ineffective.

Gastelum v. Frontier California Inc. (San Francisco Superior Court) - \$10.9 million class action settlement of claims alleging that a residential landline service provider charged unlawful late fees.

West v. California Service Bureau, Inc. (Northern District of California) - \$4.1 million class settlement of claims under the Telephone Consumer Protection Act.

Gregorio v. Premier Nutrition Corp. (Southern District of New York) - \$9 million class settlement of false advertising claims against protein shake manufacturer.

Morris v. SolarCity Corp. (Northern District of California) - \$15 million class settlement of claims under the Telephone Consumer Protection Act.

Retta v. Millennium Products, Inc. (Central District of California) - \$8.25 million settlement to resolve claims of bottled tea purchasers for alleged false advertising.

Forcellati v. Hyland's (Central District of California) – nationwide class action settlement providing full refunds to purchasers of homeopathic cold and flu remedies for children.

Dei Rossi v. Whirlpool (Eastern District of California) – class action settlement providing \$55 cash payments to purchasers of certain KitchenAid refrigerators that allegedly mislabeled as Energy Star qualified.

In Re NVIDIA GTX 970 Graphics Chip Litigation (Northern District of California) - \$4.5 million class action settlement of claims alleging that a computer graphics card was sold with false and misleading representations concerning its specifications and performance.

Hendricks v. StarKist Co. (Northern District of California) – \$12 million class action settlement of claims alleging that 5-ounce cans of tuna were underfilled.

In re Zakskorn v. American Honda Motor Co. Honda (Eastern District of California) – nationwide settlement providing for brake pad replacement and reimbursement of out-of-pocket expenses in case alleging defective brake pads on Honda Civic vehicles manufactured between 2006 and 2011.

Correa v. Sensa Products, LLC (Los Angeles Superior Court) - \$9 million settlement on behalf of purchasers of the Sensa weight loss product.

In re Pacific Bell Late Fee Litigation (Contra Costa County Superior Court) - \$38.6 million settlement on behalf of Pac Bell customers who paid an allegedly unlawful late payment charge.

In re Haier Freezer Consumer Litigation (Northern District of California) - \$4 million settlement, which provided for cash payments of between \$50 and \$325.80 to class members who purchased the Haier HNCM070E chest freezer.

Thomas v. Global Vision Products, Inc. (Alameda County Superior Court) - \$30 million settlement on behalf of a class of purchasers of a hair loss remedy.

Guyette v. Viacom, Inc. (Alameda County Superior Court) - \$13 million settlement for a class of cable television subscribers who alleged that the defendant had improperly failed to share certain tax refunds with its subscribers.

JOSEPH I. MARCHESE

Joseph I. Marchese is a Partner with Burson & Fisher, P.A. Joe focuses his practice on consumer class actions, employment law disputes, and commercial litigation. He has represented corporate and individual clients in a wide array of civil litigation, and has substantial trial and appellate experience.

Joe has diverse experience in litigating and resolving consumer class actions involving claims of mislabeling, false or misleading advertising, privacy violations, data breach claims, and violations of the Servicemembers Civil Relief Act.

Joe also has significant experience in multidistrict litigation proceedings. Recently, he served on the Plaintiffs' Executive Committee in *In Re: Blue Buffalo Company, Ltd. Marketing And Sales Practices Litigation*, MDL No. 2562, which resulted in a \$32 million consumer class settlement. Currently, he serves on the Plaintiffs' Steering Committee for Economic Reimbursement in *In Re: Valsartan Products Liability Litigation*, MDL No. 2875.

Joe is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, and the Eastern District of Michigan, as well as the United States Court of Appeals for the Second Circuit.

Joe graduated from Boston University School of Law in 2002 where he was a member of The Public Interest Law Journal. In 1998, Joe graduated with honors from Bucknell University.

Selected Published Decisions:

Boelter v. Hearst Communications, Inc., 269 F. Supp. 3d 172 (S.D.N.Y. Sept. 7, 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

Boelter v. Hearst Communications, Inc., 192 F. Supp. 3d 427 (S.D.N.Y. June 17, 2016), denying publisher's motion to dismiss its subscriber's allegations of state privacy law violations in putative class action.

In re Scotts EZ Seed Litigation, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported “100% Pure Olive Oil” product.

In re Michaels Stores Pin Pad Litigation, 830 F. Supp. 2d 518 (N.D. Ill. 2011), denying retailer’s motion to dismiss its customers’ state law consumer protection and privacy claims in data breach putative class action.

Selected Class Settlements:

Edwards v. Mid-Hudson Valley Federal Credit Union, Case No. 22-cv-00562-TJM-CFH (N.D.N.Y. 2023) – final approval granted for \$2.2 million class settlement to resolve claims that an upstate New York credit union was unlawfully charging overdraft fees on accounts with sufficient funds.

Edwards v. Hearst Communications, Inc., Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

In re Scotts EZ Seed Litigation, Case No. 12-cv-4727-VB (S.D.N.Y. 2018) – final approval granted for \$47 million class settlement to resolve false advertising claims of purchasers of combination grass seed product.

In Re: Blue Buffalo Marketing And Sales Practices Litigation, Case No. 14-MD-2562-RWS (E.D. Mo. 2016) – final approval granted for \$32 million class settlement to resolve claims of pet owners for alleged false advertising of pet foods.

Rodriguez v. Citimortgage, Inc., Case No. 11-cv-4718-PGG (S.D.N.Y. 2015) – final approval granted for \$38 million class settlement to resolve claims of military servicemembers for alleged foreclosure violations of the Servicemembers Civil Relief Act, where each class member was entitled to \$116,785 plus lost equity in the foreclosed property and interest thereon.

O'Brien v. LG Electronics USA, Inc., et al., Case No. 10-cv-3733-DMC (D.N.J. 2011) – final approval granted for \$23 million class settlement to resolve claims of Energy Star refrigerator purchasers for alleged false advertising of the appliances’ Energy Star qualification.

SARAH N. WESTCOT

Sarah N. Westcot is the Managing Partner of Burson & Fisher's Miami office. She focuses her practice on consumer class actions, complex business litigation, and mass torts.

She has represented clients in a wide array of civil litigation, and has substantial trial and appellate experience. Sarah served as trial counsel in *Ayyad v. Sprint Spectrum L.P.*, where Burson & Fisher won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

Sarah also has significant experience in high-profile, multi-district litigations. She currently serves on the Plaintiffs' Steering Committee in *In re Zantac (Ranitidine) Products Liability Litigation*, MDL No. 2924 (S.D. Florida). She also serves on the Plaintiffs' Executive Committee in *In re Apple Inc. App Store Simulated Casino-Style Games Litigation*, MDL No. 2985 (N.D. Cal.) and *In Re: Google Play Store Simulated Casino-Style Games Litigation*, MDL No. 3001 (N.D. Cal.).

Sarah is admitted to the State Bars of California and Florida, and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, the United States District Courts for the Southern and Middle Districts of Florida, and the bars of the United States Courts of Appeals for the Second, Eighth, and Ninth Circuits.

Sarah received her Juris Doctor from the University of Notre Dame Law School in 2009. During law school, she was a law clerk with the Cook County State's Attorney's Office in Chicago and the Santa Clara County District Attorney's Office in San Jose, CA, gaining early trial experience in both roles. She graduated with honors from the University of Florida in 2005.

Sarah is a member of The National Trial Lawyers Top 100 Civil Plaintiff Lawyers, and was selected to The National Trial Lawyers Top 40 Under 40 Civil Plaintiff Lawyers for 2022.

JOSHUA D. ARISOHN

Joshua D. Arisohn is a Partner with Burson & Fisher, P.A. Josh has litigated precedent-setting cases in the areas of consumer class actions and terrorism. He participated in the first ever trial to take place under the Anti-Terrorism Act, a statute that affords U.S. citizens the right to assert federal claims for injuries arising out of acts of international terrorism. Josh's practice continues to focus on terrorism-related matters as well as class actions.

Josh is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the District Court for the District of Columbia, and the United States Courts of Appeals for the Second and Ninth Circuits.

Josh previously practiced at Dewey & LeBoeuf LLP and DLA Piper LLP. He graduated from Columbia University School of Law in 2006, where he was a Harlan Fiske Stone Scholar, and received his B.A. from Cornell University in 2002. Josh has been honored as a 2015, 2016 and 2017 Super Lawyer Rising Star.

Selected Published Decisions:

Fields v. Syrian Arab Republic, Civil Case No. 18-1437 (RJL), entering a judgment of approximately \$850 million in favor of the family members of victims of terrorist attacks carried out by ISIS with the material support of Syria.

Farwell v. Google LLC, 2022 WL 1568361 (C.D. Ill. Mar. 31, 2022), denying social media defendant's motion to dismiss BIPA claims brought on behalf of Illinois school students using Google's Workspace for Education platform on laptop computers.

Weiman v. Miami University, Case No. 2020-00614JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Smith v. The Ohio State University, Case No. 2020-00321JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Waitt v. Kent State University, Case No. 2020-00392JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Duke v. Ohio University, Case No. 2021-00036JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Keba v. Bowling Green State University, Case No. 2020-00639JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Kirkbride v. The Kroger Co., Case No. 2:21-cv-00022-ALM-EPD, denying motion to dismiss claims based on the allegation that defendant overstated its usual and customary prices and thereby overcharged customers for generic drugs.

Selected Class Settlements:

Morris v. SolarCity Corp., Case No. 3:15-cv-05107-RS (N.D. Cal.) - final approval granted for \$15 million class settlement to resolve claims under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*

Marquez v. Google LLC, Case No. 2021-CH-1460 (Cir. Ct. Cook Cnty. 2022) – final approval granted for \$100 million class settlement to resolve alleged BIPA violations of Illinois residents appearing in photos on the Google Photos platform.

NEAL J. DECKANT

Neal J. Deckant is a Partner with Burson & Fisher, P.A., where he serves as the firm's Head of Information & e-Discovery. Neal focuses his practice on complex business litigation and consumer class actions. Prior to joining Burson & Fisher, Neal counseled low-income homeowners facing foreclosure in East Boston.

Neal is admitted to the State Bars of California and New York, and is a member of the bars of the United States District Court for the Northern District of California, the United States District Court for the Eastern District of California, the United States District Court for the Central District of California, the United States District Court for the Southern District of California, the United States District Court for the Southern District of New York, the United States District Court for the Eastern District of New York, and the bars of the United States Courts of Appeals for the Second and Ninth Circuits.

Neal received his Juris Doctor from Boston University School of Law in 2011, graduating cum laude with two Dean's Awards. During law school, Neal served as a Senior Articles Editor for the Review of Banking and Financial Law, where he authored two published articles about securitization reforms, both of which were cited by the New York Court of Appeals, the highest court in the state. Neal was also awarded Best Oral Argument in his moot court section, and he served as a Research Assistant for his Securities Regulation professor. Neal has also been honored as a 2014, 2015, 2016, and 2017 Super Lawyers Rising Star. In 2007, Neal graduated with Honors from Brown University with a dual major in East Asian Studies and Philosophy.

Selected Published Decisions:

Martinelli v. Johnson & Johnson, 2019 WL 1429653 (N.D. Cal. Mar. 29, 2019), granting class certification of false advertising and other claims brought by purchasers of Benecol spreads labeled with the representation "No Trans Fats."

Dzielak v. Whirlpool Corp., 2017 WL 6513347 (D.N.J. Dec. 20, 2017), granting class certification of consumer protection claims brought by purchasers of Maytag Centennial washing machines marked with the "Energy Star" logo.

Duran v. Obesity Research Institute, LLC, 204 Cal. Rptr. 3d 896 (Cal. Ct. App. 2016), reversing and remanding final approval of a class action settlement on appeal, regarding allegedly mislabeled dietary supplements, in connection with a meritorious objection.

Marchuk v. Faruqi & Faruqi, LLP, et al., 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting individual and law firm defendants' motion for judgment as a matter of law on plaintiff's claims for retaliation and defamation, as well as for all claims against law firm partners, Nadeem and Lubna Faruqi.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

Ebin v. Kangadis Food Inc., 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

Selected Class Settlements:

In Re NVIDIA GTX 970 Graphics Chip Litigation, Case No. 15-cv-00760-PJH (N.D. Cal. Dec. 7, 2016) – final approval granted for \$4.5 million class action settlement to resolve claims that a computer graphics card was allegedly sold with false and misleading representations concerning its specifications and performance.

Hendricks v. StarKist Co., 2016 WL 5462423 (N.D. Cal. Sept. 29, 2016) – final approval granted for \$12 million class action settlement to resolve claims that 5-ounce cans of tuna were allegedly underfilled.

In re: Kangadis Food Inc., Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014) – class action claims resolved for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy, following claims that its olive oil was allegedly sold with false and misleading representations.

Selected Publications:

Neal Deckant, *X. Reforms of Collateralized Debt Obligations: Enforcement, Accounting and Regulatory Proposals*, 29 Rev. Banking & Fin. L. 79 (2009) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014)).

Neal Deckant, *Criticisms of Collateralized Debt Obligations in the Wake of the Goldman Sachs Scandal*, 30 Rev. Banking & Fin. L. 407 (2010) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014); *Lyon Village Venetia, LLC v. CSE Mortgage LLC*, 2016 WL 476694, at *1 n.1 (Md. Ct. Spec. App. Feb. 4, 2016); Ivan Ascher, *Portfolio Society: On the Capitalist Mode of Prediction*, at 141, 153, 175 (Zone Books / The MIT Press 2016); Devon J. Steinmeyer, *Does State National Bank of Big Spring v. Geithner Stand a Fighting Chance?*, 89 Chi.-Kent. L. Rev. 471, 473 n.13 (2014)).

YITZCHAK KOPEL

Yitzchak Kopel is a Partner with Burson & Fisher, P.A. Yitz focuses his practice on consumer class actions and complex business litigation. He has represented corporate and individual clients before federal and state courts, as well as in arbitration proceedings.

Yitz has substantial experience in successfully litigating and resolving consumer class actions involving claims of consumer fraud, data breaches, and violations of the telephone consumer protection act. Since 2014, Yitz has obtained class certification on behalf of his clients five times, three of which were certified as nationwide class actions. Burson & Fisher was appointed as class counsel to represent the certified classes in each of the cases.

Yitz is admitted to the State Bars of New York and New Jersey, the bar of the United States Court of Appeals for the Second, Eleventh, and Ninth Circuits, and the bars of the United States District Courts for the Southern District of New York, Eastern District of New York, Eastern District of Missouri, Eastern District of Wisconsin, Northern District of Illinois, and District of New Jersey.

Yitz received his Juris Doctorate from Brooklyn Law School in 2012, graduating *cum laude* with two Dean's Awards. During law school, Yitz served as an Articles Editor for the Brooklyn Law Review and worked as a Law Clerk at Shearman & Sterling. In 2009, Yitz graduated *cum laude* from Queens College with a B.A. in Accounting.

Selected Published Decisions:

Bassaw v. United Industries Corp., 482 F.Supp.3d 80, 2020 WL 5117916 (S.D.N.Y. Aug. 31, 2020), denying motion to dismiss claims in putative class action concerning insect foggers.

Poppiti v. United Industries Corp., 2020 WL 1433642 (E.D. Mo. Mar. 24, 2020), denying motion to dismiss claims in putative class action concerning citronella candles.

Bakov v. Consolidated World Travel, Inc., 2019 WL 6699188 (N.D. Ill. Dec. 9, 2019), granting summary judgment on behalf of certified class in robocall class action.

Krumm v. Kittrich Corp., 2019 WL 6876059 (E.D. Mo. Dec. 17, 2019), denying motion to dismiss claims in putative class action concerning mosquito repellent.

Crespo v. S.C. Johnson & Son, Inc., 394 F. Supp. 3d 260 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding Raid insect fogger.

Bakov v. Consolidated World Travel, Inc., 2019 WL 1294659 (N.D. Ill. Mar. 21, 2019), certifying a class of persons who received robocalls in the state of Illinois.

Bourbia v. S.C. Johnson & Son, Inc., 375 F. Supp. 3d 454 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding mosquito repellent.

Hart v. BHH, LLC, 323 F. Supp. 3d 560 (S.D.N.Y. 2018), denying defendants' motion for summary judgment in certified class action involving the sale of ultrasonic pest repellers.

Hart v. BHH, LLC, 2018 WL 3471813 (S.D.N.Y. July 19, 2018), denying defendants' motion to exclude plaintiffs' expert in certified class action involving the sale of ultrasonic pest repellers.

Penrose v. Buffalo Trace Distillery, Inc., 2018 WL 2334983 (E.D. Mo. Feb. 5, 2018), denying bourbon producers' motion to dismiss fraud and consumer protection claims in putative class action.

West v. California Service Bureau, Inc., 323 F.R.D. 295 (N.D. Cal. 2017), certifying a nationwide class of “wrong-number” robocall recipients.

Hart v. BHH, LLC, 2017 WL 2912519 (S.D.N.Y. July 7, 2017), certifying nationwide class of purchasers of ultrasonic pest repellers.

Browning v. Unilever United States, Inc., 2017 WL 7660643 (C.D. Cal. Apr. 26, 2017), denying motion to dismiss fraud and warranty claims in putative class action concerning facial scrub product.

Brenner v. Procter & Gamble Co., 2016 WL 8192946 (C.D. Cal. Oct. 20, 2016), denying motion to dismiss warranty and consumer protection claims in putative class action concerning baby wipes.

Hewlett v. Consolidated World Travel, Inc., 2016 WL 4466536 (E.D. Cal. Aug. 23, 2016), denying telemarketer’s motion to dismiss TCPA claims in putative class action.

Bailey v. KIND, LLC, 2016 WL 3456981 (C.D. Cal. June 16, 2016), denying motion to dismiss fraud and warranty claims in putative class action concerning snack bars.

Hart v. BHH, LLC, 2016 WL 2642228 (S.D.N.Y. May 5, 2016) denying motion to dismiss warranty and consumer protection claims in putative class action concerning ultrasonic pest repellers.

Marchuk v. Faruqi & Faruqi, LLP, et al., 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting clients’ motion for judgment as a matter of law on claims for retaliation and defamation in employment action.

In re Scotts EZ Seed Litigation, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

Brady v. Basic Research, L.L.C., 101 F. Supp. 3d 217 (E.D.N.Y. 2015), denying diet pill manufacturers’ motion to dismiss its purchasers’ allegations for breach of express warranty in putative class action.

Ward v. TheLadders.com, Inc., 3 F. Supp. 3d 151 (S.D.N.Y. 2014), denying online job board’s motion to dismiss its subscribers’ allegations of consumer protection law violations in putative class action.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported “100% Pure Olive Oil” product.

Ebin v. Kangadis Food Inc., 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor’s motion for summary judgment against nationwide class of purchasers of purported “100% Pure Olive Oil” product.

Selected Class Settlements:

Hart v. BHH, LLC, Case No. 1:15-cv-04804 (S.D.N.Y. Sept. 22, 2020), resolving class action claims regarding ultrasonic pest repellers.

In re: Kangadis Food Inc., Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014), resolving class action claims for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy following the certification of nationwide claims alleging that its olive oil was sold with false and misleading representations.

West v. California Service Bureau, Case No. 4:16-cv-03124-YGR (N.D. Cal. Jan. 23, 2019), resolving class action claims against debt-collector for wrong-number robocalls for \$4.1 million.

PHILIP L. FRAIETTA

Philip L. Fraietta is a Partner with Bursor & Fisher, P.A. Phil focuses his practice on data privacy, complex business litigation, consumer class actions, and employment law disputes. Phil has been named a “Rising Star” in the New York Metro Area by Super Lawyers® every year since 2019.

Phil has significant experience in litigating consumer class actions, particularly those involving privacy claims under statutes such as the Michigan Preservation of Personal Privacy Act, the Illinois Biometric Information Privacy Act, and Right of Publicity statutes. Since 2016, Phil has recovered over \$100 million for class members in privacy class action settlements. In addition to privacy claims, Phil has significant experience in litigating and settling class action claims involving false or misleading advertising.

Phil is admitted to the State Bars of New York, New Jersey, Illinois, and Michigan, the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the Western District of New York, the Northern District of New York, the District of New Jersey, the Eastern District of Michigan, the Western District of Michigan, the Northern District of Illinois, the Central District of Illinois, and the United States Court of Appeals for the Second, Third, and Ninth Circuits. Phil was a Summer Associate with Bursor & Fisher prior to joining the firm.

Phil received his Juris Doctor from Fordham University School of Law in 2014, graduating cum laude. During law school, Phil served as an Articles & Notes Editor for the Fordham Law Review, and published two articles. In 2011, Phil graduated cum laude from Fordham University with a B.A. in Economics.

Selected Published Decisions:

Fischer v. Instant Checkmate LLC, 2022 WL 971479 (N.D. Ill. Mar. 31, 2022), certifying class of Illinois residents for alleged violations of Illinois’ Right of Publicity Act by background reporting website.

Kolebuck-Utz v. Whitepages Inc., 2021 WL 157219 (W.D. Wash. Apr. 22, 2021), denying defendant's motion to dismiss for alleged violations of Ohio's Right to Publicity Law.

Bergeron v. Rochester Institute of Technology, 2020 WL 7486682 (W.D.N.Y. Dec. 18, 2020), denying university's motion to dismiss for failure to refund tuition and fees for the Spring 2020 semester in light of the COVID-19 pandemic.

Porter v. NBTY, Inc., 2019 WL 5694312 (N.D. Ill. Nov. 4, 2019), denying supplement manufacturer's motion for summary judgment on consumers' allegations of false advertising relating to whey protein content.

Boelter v. Hearst Communications, Inc., 269 F. Supp. 3d 172 (S.D.N.Y. 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

Selected Class Settlements:

Edwards v. Hearst Communications, Inc., Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Ruppel v. Consumers Union of United States, Inc., Case No. 16-cv-02444-KMK (S.D.N.Y. 2018) – final approval granted for \$16.375 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Benbow v. SmileDirectClub, LLC, Case No. 2020-CH-07269 (Cir. Ct. Cook Cnty. 2021) – final approval granted for \$11.5 million class settlement to resolve claims for alleged TCPA violations.

Gregorio v. Premier Nutrition Corp., Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for \$9 million class settlement to resolve claims of protein shake purchasers for alleged false advertising.

Taylor v. Trusted Media Brands, Inc., Case No. 16-cv-01812-KMK (S.D.N.Y. 2018) – final approval granted for \$8.225 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Moeller v. American Media, Inc., Case No. 16-cv-11367-JEL (E.D. Mich. 2017) – final approval granted for \$7.6 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Rocchio v. Rutgers, The State University of New Jersey, Case No. MID-L-003039-20 (Sup. Ct. Middlesex Cnty. 2022) – final approval granted for \$5 million class settlement to resolve claims

for failure to refund mandatory fees for the Spring 2020 semester in light of the COVID-19 pandemic.

Heigl v. Waste Management of New York, LLC, Case No. 19-cv-05487-WFK-ST (E.D.N.Y. 2021) – final approval granted for \$2.7 million class settlement to resolve claims for charging allegedly unlawful fees pertaining to paper billing.

Frederick v. Examsoft Worldwide, Inc., Case No. 2021L001116 (Cir. Ct. DuPage Cnty. 2022) – final approval granted for \$2.25 million class settlement to resolve claims for alleged BIPA violations.

ALEC M. LESLIE

Alec Leslie is a Partner with Burson & Fisher, P.A. He focuses his practice on consumer class actions, employment law disputes, and complex business litigation.

Alec is admitted to the State Bar of New York and is a member of the bar of the United States District Courts for the Southern and Eastern Districts of New York. Alec was a Summer Associate with Burson & Fisher prior to joining the firm.

Alec received his Juris Doctor from Brooklyn Law School in 2016, graduating *cum laude*. During law school, Alec served as an Articles Editor for Brooklyn Law Review. In addition, Alec served as an intern to the Honorable James C. Francis for the Southern District of New York and the Honorable Vincent Del Giudice, Supreme Court, Kings County. Alec graduated from the University of Colorado with a B.A. in Philosophy in 2012.

Selected Class Settlements:

Gregorio v. Premier Nutrition Corp., Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for class settlement to resolve claims of protein shake purchasers for alleged false advertising.

Wright v. Southern New Hampshire Univ., Case No. 1:20-cv-00609-LM (D.N.H. 2021) – final approval granted for class settlement to resolve claims over COVID-19 tuition and fee refunds to students.

Mendoza et al. v. United Industries Corp., Case No. 21PH-CV00670 (Phelps Cnty. Mo. 2021) – final approval granted for class settlement to resolve false advertising claims on insect repellent products.

Kaupelis v. Harbor Freight Tools USA, Inc., Case No. 8:19-cv-01203-JVS-DFM (C.D. Cal. 2021) – final approval granted for class settlement involving allegedly defective and dangerous chainsaws.

Rocchio v. Rutgers Univ., Case No. MID-L-003039-20 (Middlesex Cnty. N.J. 2021) – final approval granted for class settlement to resolve claims over COVID-19 fee refunds to students.

Malone v. Western Digital Corporation, Case No. 5:20-cv-03584-NC (N.D. Cal.) – final approval granted for class settlement to resolve false advertising claims on hard drive products.

Frederick et al. v. ExamSoft Worldwide, Inc., Case No. 2021L001116 (DuPage Cnty. Ill. 2021) – final approval granted for class settlement to resolve claims over alleged BIPA violations with respect to exam proctoring software.

STEPHEN BECK

Stephen is an Associate with Bursor & Fisher, P.A. Stephen focuses his practice on complex civil litigation and class actions.

Stephen is admitted to the State Bar of Florida and is a member of the bars of the United States District Courts for the Southern and Middle Districts of Florida.

Stephen received his Juris Doctor from the University of Miami School of Law in 2018. During law school, Stephen received an Honors distinction in the Litigation Skills Program and was awarded the Honorable Theodore Klein Memorial Scholarship for excellence in written and oral advocacy. Stephen also received the CALI Award in Legislation for earning the highest grade on the final examination. Stephen graduated from the University of North Florida with a B.A. in Philosophy in 2015.

STEFAN BOGDANOVICH

Stefan Bogdanovich is an Associate with Bursor & Fisher, P.A. Stefan litigates complex civil and class actions typically involving privacy, intellectual property, entertainment, and false advertising law.

Prior to working at Bursor & Fisher, Stefan practiced at two national law firms in Los Angeles. He helped represent various companies in false advertising and IP infringement cases, media companies in defamation cases, and motion picture producers in royalty disputes. He also advised corporations and public figures on complying with various privacy and advertising laws and regulations.

Stefan is admitted to the State Bar of California and all of the California Federal District Courts. He is also a Certified Information Privacy Professional.

Stefan received his Juris Doctor from the University of Southern California Gould School of Law in 2018, where he was a member of the Hale Moot Court Honors Program and the Trial Team. He received the highest grade in his class in three subjects, including First Amendment Law.

BRITTANY SCOTT

Brittany Scott is an Associate with Bursor & Fisher, P.A. Brittany focuses her practice on data privacy, complex civil litigation, and consumer class actions. Brittany was an intern with Bursor & Fisher prior to joining the firm.

Brittany has substantial experience litigating consumer class actions, including those involving data privacy claims under statutes such as the Illinois Biometric Information Privacy Act, the Fair Credit Reporting Act, and the Michigan Preservation of Personal Privacy Act. In addition to data privacy claims, Brittany has significant experience in litigating class action claims involving false and misleading advertising.

Brittany is admitted the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, the Eastern District of Wisconsin, the Northern District of Illinois, the Ninth Circuit Court of Appeals, the Seventh Circuit Court of Appeals, and Second Circuit Court of Appeals.

Brittany received her Juris Doctor from the University of California, Hastings College of the Law in 2019, graduating cum laude. During law school, Brittany was a member of the Constitutional Law Quarterly, for which she was the Executive Notes Editor. Brittany published a note in the Constitutional Law Quarterly entitled “Waiving Goodbye to First Amendment Protections: First Amendment Waiver by Contract.” Brittany also served as a judicial extern to the Honorable Andrew Y.S. Cheng for the San Francisco Superior Court. In 2016, Brittany graduated from the University of California Berkeley with a B.A. in Political Science.

Selected Class Settlements:

Morrissey v. Tula Life, Inc., Case No. 2021L0000646 (Cir. Ct. DuPage Cnty. 2021) – final approval granted for \$4 million class settlement to resolve claims of cosmetics purchasers for alleged false advertising.

Clarke et al. v. Lemonade Inc., Case No. 2022LA000308 (Cir. Ct. DuPage Cnty. 2022) – final approval granted for \$4 million class settlement to resolve claims for alleged BIPA violations.

Whitlock v. Jabil Inc., Case No. 2021CH00626 (Cir. Ct. Cook Cnty. 2022) – final approval granted for \$995,000 class settlement to resolve claims for alleged BIPA violations.

MAX S. ROBERTS

Max Roberts is an Associate in Bursor & Fisher’s New York office. Max focuses his practice on class actions concerning data privacy and consumer protection. Max was a Summer Associate with Bursor & Fisher prior to joining the firm and is now Co-Chair of the firm’s Appellate Practice Group.

In 2023, Max was named “Rising Star” in the New York Metro Area by Super Lawyers®.

Max received his Juris Doctor from Fordham University School of Law in 2019, graduating *cum laude*. During law school, Max was a member of Fordham’s Moot Court Board, the Brennan Moore Trial Advocates, and the Fordham Urban Law Journal, for which he published a note entitled [Weaning Drug Manufacturers Off Their Painkiller: Creating an Exception to the Learned Intermediary Doctrine in Light of the Opioid Crisis](#). In addition, Max

served as an intern to the Honorable Vincent L. Briccetti of the Southern District of New York and the Fordham Criminal Defense Clinic. Max graduated from Johns Hopkins University in 2015 with a B.A. in Political Science.

Outside of the law, Max is an avid triathlete.

Selected Published Decisions:

Jackson v. Amazon.com, Inc., 65 F.4th 1093 (9th Cir. 2023), affirming district court's denial of motion to compel arbitration. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

Javier v. Assurance IQ, LLC, 2022 WL 1744107 (9th Cir. May 31, 2022), reversing district court and holding that Section 631 of the California Invasion of Privacy Act requires prior consent to wiretapping. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

Mora v. J&M Plating, Inc., 213 N.E.3d 942 (Ill. App. Ct. 2d Dist. 2022), reversing circuit court and holding that Section 15(a) of Illinois' Biometric Information Privacy Act requires an entity to establish a retention and deletion schedule for biometric data at the first moment of possession. Max personally argued the appeal before the Second District, which can be listened to [here](#).

James v. Walt Disney Co., --- F. Supp. 3d ---, 2023 WL 7392285 (N.D. Cal. Nov. 8, 2023), largely denying motion to dismiss alleged violations of California and Pennsylvania wiretapping statutes.

Yockey v. Salesforce, Inc., 2023 WL 5519323 (N.D. Cal. Aug. 25, 2023), denying in part motion to dismiss alleged violations of California and Pennsylvania wiretapping statutes.

Cristostomo v. New Balance Athletics, Inc., 647 F. Supp. 3d 1 (D. Mass. 2022), denying motion to dismiss and motion to strike class allegations in case involving sneakers marketed as "Made in the USA."

Carroll v. Myriad Genetics, Inc., 2022 WL 16860013 (N.D. Cal. Nov. 9, 2022), denying in part motion to dismiss in case involving non-invasive prenatal testing product.

Louth v. NFL Enterprises LLC, 2022 WL 4130866 (D.R.I. Sept. 12, 2022), denying motion to dismiss alleged violations of the Video Privacy Protection Act.

Soo v. Lorex Corp., 2020 WL 5408117 (N.D. Cal. Sept. 9, 2020), denying defendants' motion to compel arbitration and denying in part motion to dismiss consumer protection claims in putative class action concerning security cameras.

Selected Class Settlements:

Sholopa v. Turk Hava Yollari A.O. (d/b/a Turkish Airlines), Case No. 1:20-cv-3294-ALC (S.D.N.Y. 2023) – final approval granted for \$14.1 million class settlement to resolve claims of passengers whose flights with Turkish Airlines were cancelled due to COVID-19 and who did not receive refunds.

Payero v. Mattress Firm, Inc., Case No. 7:21-cv-3061-VB (S.D.N.Y. 2023) – final approval granted for \$4.9 million class settlement to resolve claims of consumers who purchased allegedly defective bed frames.

Miranda v. Golden Entertainment (NV), Inc., Case No. 2:20-cv-534-AT (D. Nev. 2021) – final approval granted for class settlement valued at over \$4.5 million to resolve claims of customers and employees of casino company stemming from data breach.

Malone v. Western Digital Corp., Case No. 5:20-cv-3584-NC (N.D. Cal. 2021) – final approval granted for class settlement valued at \$5.7 million to resolve claims of hard drive purchasers for alleged false advertised.

Frederick v. ExamSoft Worldwide, Inc., Case No. 2021-L-001116 (18th Judicial Circuit Court DuPage County, Illinois 2021) – final approval granted for \$2.25 million class settlement to resolve claims of Illinois students for alleged violations of the Illinois Biometric Information Privacy Act.

Bar Admissions

- New York State
- Southern District of New York
- Eastern District of New York
- Northern District of New York
- Northern District of Illinois
- Central District of Illinois
- Eastern District of Michigan
- District of Colorado
- Third Circuit Court of Appeals
- Seventh Circuit Court of Appeals
- Ninth Circuit Court of Appeals

JULIA K. VENDITTI

Julia Venditti is an Associate with Bursor & Fisher, P.A. Julia focuses her practice on complex civil litigation and class actions. Julia was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julia is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Julia received her Juris Doctor in 2020 from the University of California, Hastings College of the Law, where she graduated *cum laude* with two CALI Awards for the highest

grade in her Evidence and California Community Property classes. During law school, Julia was a member of the UC Hastings Moot Court team and competed at the Evans Constitutional Law Moot Court Competition, where she finished as a national quarterfinalist and received a best brief award. Julia was also inducted into the UC Hastings Honors Society and was awarded Best Brief and an Honorable Mention for Best Oral Argument in her First-Year Moot Court section. In addition, Julia served as a Research Assistant for her Constitutional Law professor, as a Teaching Assistant for Legal Writing & Research, and as a Law Clerk at the San Francisco Public Defender's Office. In 2017, Julia graduated *magna cum laude* from Baruch College/CUNY, Weissman School of Arts and Sciences, with a B.A. in Political Science.

JULIAN DIAMOND

Julian Diamond is an Associate with Bursor & Fisher, P.A. Julian focuses his practice on privacy law and class actions. Julian was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julian received his Juris Doctor from Columbia Law School, where he was a Harlan Fiske Stone Scholar. During law school, Julian was Articles Editor for the Columbia Journal of Environmental Law. Prior to law school, Julian worked in education. Julian graduated from California State University, Fullerton with a B.A. in History and a single subject social science teaching credential.

MATTHEW GIRARDI

Matt Girardi is an Associate with Bursor & Fisher, P.A. Matt focuses his practice on complex civil litigation and class actions, and has focused specifically on consumer class actions involving product defects, financial misconduct, false advertising, and privacy violations. Matt was a Summer Associate with Bursor & Fisher prior to joining the firm.

Matt is admitted to the State Bar of New York, and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, and the Eastern District of Michigan

Matt received his Juris Doctor from Columbia Law School in 2020, where he was a Harlan Fiske Stone Scholar. During law school, Matt was the Commentary Editor for the Columbia Journal of Tax Law, and represented fledgling businesses for Columbia's Entrepreneurship and Community Development Clinic. In addition, Matt worked as an Honors Intern in the Division of Enforcement at the U.S. Securities and Exchange Commission. Prior to law school, Matt graduated from Brown University in 2016 with a B.A. in Economics, and worked as a Paralegal Specialist at the U.S. Department of Justice in the Antitrust Division.

JENNA GAVENMAN

Jenna Gavenman is an Associate with Bursor & Fisher, P.A. Jenna focuses her practice on complex civil litigation and consumer class actions. Jenna was a Summer Associate and a part-time intern with Bursor & Fisher prior to joining the firm as a full-time Associate in September 2022.

Jenna is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Jenna received her Juris Doctor in 2022 from the University of California, Hastings College of the Law (now named UC Law SF). During law school, she was awarded an Honorable Mention for Best Oral Argument in her First-Year Moot Court section. Jenna also participated in both the Medical Legal Partnership for Seniors (MLPS) and the Lawyering for Children Practicum at Legal Services for Children—two of UC Hastings's nationally renowned clinical programs. Jenna was awarded the Clinic Award for Outstanding Performance in MLPS for her contributions to the clinic. In addition, Jenna volunteered with her law school's Legal Advice and Referral Clinic and as a LevelBar Mentor.

In 2018, Jenna graduated *cum laude* from Villanova University with a B.A. in Sociology and Spanish (double major). Jenna was a Division I athlete, competing on the Villanova Women's Water Polo varsity team for four consecutive years.

EMILY HORNE

Emily Horne is an Associate with Burson & Fisher, P.A. Emily focuses her practice on complex civil litigation and consumer class actions. Emily was a Summer Associate with Burson & Fisher prior to joining the firm.

Emily is admitted to the State Bar of California.

Emily received her Juris Doctor from the University of California, Hastings College of the Law in 2022 (now UC, Law SF). During law school, Emily served as Editor-in-Chief for the UC Hastings Communications and Entertainment Law Journal, and she competed on the Moot Court team. Emily also served as a judicial extern in the Northern District of California and as a Teaching Assistant for Legal Writing & Research. In 2015, Emily graduated from Scripps College with a B.A. in Sociology.

IRA ROSENBERG

Ira Rosenberg is an Associate with Burson & Fisher, P.A. Ira focuses his practice on complex civil litigation and class actions.

Ira received his Juris Doctor in 2022 from Columbia Law School. During law school, Ira served as a Student Honors Legal Intern with Division of Enforcement at the U.S. Securities and Exchange Commission. Ira also interned during law school in the Criminal Division at the United States Attorney's Office for the Southern District of New York and with the Investor Protection Bureau at the Office of the New York State Attorney General. Ira graduated in 2018 from Beth Medrash Govoha with a B.A. in Talmudic Studies.

LUKE SIRONSKI-WHITE

Luke Sironski-White is an Associate with Burson & Fisher, P.A., focusing on complex civil litigation and consumer class actions. Luke joined the firm as a full-time Associate in August 2022.

Luke is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Luke received his Juris Doctor in 2022 from the University of California, Berkeley School of Law. During law school, Luke was on the board of the Consumer Advocacy and Protection Society (CAPS), edited for the Berkeley Journal of Employment and Labor Law, and volunteered with the Prisoner Advocacy Network.

In 2017, Luke graduated from the University of Chicago with a B.A. in Anthropology. Before entering the field of law Luke was a professional photographer and filmmaker.

JONATHAN L. WOLLOCH

Jonathan L. Wolloch is an Associate with Burson & Fisher, P.A. Jonathan focuses his practice on complex civil litigation and class actions. Jonathan was a Summer Associate with Burson & Fisher prior to joining the firm.

Jonathan is admitted to the State Bar of Florida and the bars of the United States District Courts for the Southern and Middle Districts of Florida.

Jonathan received his Juris Doctor from the University of Miami School of Law in 2022, graduating magna cum laude. During law school, Jonathan served as a judicial intern to the Honorable Beth Bloom for the Southern District of Florida. He received two CALI Awards for earning the highest grade in his Trusts & Estates and Substantive Criminal Law courses, and he was elected to the Order of the Coif. Jonathan was also selected for participation in a semester long externship at the Florida Supreme Court, where he served as a judicial extern to the Honorable John D. Couriel. In 2018, Jonathan graduated from the University of Michigan with a B.A. in Political Science.

INES DIAZ

Ines Diaz is an Associate with Burson & Fisher, P.A. Ines focuses her practice on complex civil litigation and class actions.

Ines is admitted to the State Bar of California.

Ines received her Juris Doctor in 2023 from the University of California, Berkeley School of Law. During law school, Ines served as an Executive Editor of the California Law Review. She also served as an intern with the East Bay Community Law Center's Immigration Clinic and as a Fellow of the Berkeley Law Academic Skills Program. Additionally, Ines served as an instructor with the University of California, Berkeley Extension, Legal Studies Global Access

Program where she taught legal writing to international law students. In 2021, Ines was selected for a summer externship at the California Supreme Court where she served as a judicial extern for the Honorable Mariano-Florentino Cuéllar.

CAROLINE C. DONOVAN

Caroline C. Donovan is an Associate with Bursor & Fisher, P.A. Caroline focuses her practice on complex civil litigation, data protection, mass arbitration, and class actions. Caroline interned with Bursor & Fisher during her third year of law school before joining full time in Fall 2023.

Caroline is admitted to the State Bar of New York.

Caroline received her Juris Doctor in 2023 from Brooklyn Law School. During law school, Caroline was a member of the Moot Court Honor Society Trial Division, where she was chosen to serve as a National Team Member. Caroline competed and coached in numerous competitions across the country, and placed second at regionals in AAJ's national competition in both her second and third year of law school. Caroline was also the President of the Art Law Association, and the Treasurer of the Labor and Employment Law Association.

During law school, Caroline was a judicial intern for Judge Kenneth W. Chu of the National Labor Relations Board. She also interned at the United States Attorney's Office in the Eastern District of New York, as well as a securities class action firm.

JOSHUA B. GLATT

Joshua Glatt is an Associate with Bursor & Fisher, P.A. Joshua focuses his practice on complex civil litigation and consumer class actions. Joshua was a Summer Associate with Bursor & Fisher prior to joining the firm as an Associate.

Joshua earned his Juris Doctor from the University of California College of the Law, San Francisco (formerly U.C. Hastings). While there, he received a CALI Award for earning the highest grade in Constitutional Law II and served on the executive boards of the Jewish Law Students Association and the American Constitution Society. Prior to law school, Joshua graduated *summa cum laude* from the Walter Cronkite School of Journalism and Mass Communication at Arizona State University in 2016 and earned a master's degree from the University of Southern California in 2018.

JOSHUA R. WILNER

Joshua Wilner is an Associate with Bursor & Fisher, P.A. Joshua focuses his practice on complex civil litigation, data privacy, consumer protection, and class actions. Joshua was a Summer Associate at Bursor & Fisher prior to joining the firm full time in Fall 2023.

Joshua is admitted to the State Bar of California.

Joshua received his Juris Doctor in 2023 from Berkeley Law. During law school, he received the American Jurisprudence Award for Constitutional Law.

During law school, Joshua served on the board of the Berkeley Journal of Employment and Labor Law. Joshua also interned at Disability Rights California, Legal Aid at Work, and a private firm that worked closely with the ACLU of Northern California to enforce the California Racial Justice Act. In 2022 and 2023, Joshua worked as a research assistant for Professor Abbye Atkinson.

VICTORIA ZHOU

Victoria Zhou is an Associate in Bursor & Fisher's New York office. Victoria focuses her practice on class actions concerning data privacy and consumer protection.

Victoria is admitted to the State Bar of New York.

Victoria received her Juris Doctor from Fordham Law School in 2023. During law school, Victoria served as an Associate Editor of the Moot Court Board and competed in multiple mock trial competitions as a member of the Brendan Moore Trial Advocates. In addition, Victoria served as a judicial extern to Chief Judge Mark A. Barnett of the United States Court of International Trade. In 2019, Victoria graduated *magna cum laude* from Fei Tian College with a B.F.A. in Classical Dance.

KYLE D. GORDON

Kyle Gordon is a Law Clerk with Bursor & Fisher, P.A. who is interested in data privacy and consumer class actions. Kyle was a Summer Associate prior to joining the firm

Kyle passed the July 2023 New York State Bar Examination and will be applying to the State Bar of New York.

Kyle received his Juris Doctor from Columbia Law School in 2023, where he was a Harlan Fiske Stone Scholar. During law school, Kyle was a Staff Editor for the Columbia Science and Technology Law Review. In 2020, Kyle graduated *summa cum laude* from New York University with a B.A. in Politics and became a member of Phi Beta Kappa. Prior to law school, Kyle interned in the Clerk's Office of the United States District Court for the District of Columbia.

EXHIBIT 2

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| DATE | AMOUNT | DESCRIPTION | CODE |
|------------|----------|--|--------------------|
| 2023.07.12 | \$505.00 | Courts/USDC-OR | Filing fees |
| 2023.08.14 | \$243.44 | First Legal Network Insurance Services LLC | Litigation Expense |
| 2023.08.14 | \$402.00 | Courts/USDC-MO-WD | Filing fees |
| 2023.10.17 | \$402.00 | Markowitz Herbold PC | Filing fees |
| 2023.12.04 | \$100.00 | Courts/USDC-MO-WD | Filing fees |